AN ACT
relating to certain resources and facilities for distributed
generation.

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

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

Sec. 113.003. LEASE, SALES, AND INSTALLATION DISCLOSURES.

A seller or lessor 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
shall provide to the customer in writing:

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

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

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

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

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

(6) all applicable warranties.

Sec. 113.004. ADDITIONAL DISCLOSURES FOR LEASE AGREEMENTS.

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

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

(2) 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.

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

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

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

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

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

SUBCHAPTER C. REGULATION OF SOLAR ENERGY DEVICES

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

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

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

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

(b) A municipality may not prohibit or restrict the
installation of a solar energy device by a residential or small commercial customer except to the extent:

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

(2) 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, or the protocols of an independent organization certified under Section 39.151, Utilities Code, limit the installation of solar energy devices due to reliability, power quality, or safety of the distribution system.

SECTION 3. Subchapter B, Chapter 35, Utilities Code, is amended by adding Section 35.037 to read as follows:

Sec. 35.037. INTERCONNECTION AND OPERATION OF CERTAIN DISTRIBUTED GENERATION FACILITIES FOR FOOD SUPPLY CHAIN. (a) In this section:

(1) "Customer" means a retail electric customer:

(A) with a distributed generation facility installed on the retail electric customer's side of the meter; and

(B) that has a primary purpose of or derives a material source of revenue from:

(i) retail grocery sales; or

(ii) food manufacturing or distribution for retail grocery sales.

(2) "Distributed generation facility" means a facility installed on the customer's side of the meter but
separately metered from the customer:

(A) with a nameplate capacity of at least 250 kilowatts and not more than 10 megawatts;

(B) that is capable of generating and providing backup or supplementary power to the customer’s premises; and

(C) that is owned or operated by a person registered as a power generation company in accordance with Section 39.351.

(b) This section only applies in the ERCOT power region in areas where retail customer choice has not been implemented.

(c) A person who owns or operates a distributed generation facility served by a municipally owned utility or electric cooperative in the ERCOT power region may sell electric power generated by the distributed generation facility at wholesale, including the provision of ancillary services, subject to the limitations of this section.

(d) A person who owns or operates a distributed generation facility may sell electric power generated by the distributed generation facility at wholesale to a municipally owned utility or electric cooperative certificated for retail service to the area where the distributed generation facility is located or to a related generation and transmission electric cooperative. The municipally owned utility or electric cooperative shall purchase at wholesale the quantity of electric power generated by the distributed generation facility needed to satisfy the full electric requirements of the customer on whose side of the meter the distributed generation facility is installed and operated at a
wholesale price agreed to by the customer and shall resell that quantity of power at retail to the customer at the rate applicable to the customer for retail service, which must at minimum include all amounts paid for the wholesale electric power, during:

(1) an emergency declared by the independent organization certified under Section 39.151 for the ERCOT power region that creates the potential for interruption of service to the customer;

(2) any service interruption at the customer’s premises;

(3) construction on the customer’s premises that creates the potential for interruption of service to the customer;

(4) maintenance and testing of the distributed generation facility; and

(5) additional times mutually agreed on by the owner or operator of the distributed generation facility and the municipally owned utility or electric cooperative.

(e) The customer shall provide written notice as soon as reasonably practicable to the municipally owned utility or electric cooperative of a circumstance described by Subsection (d)(3) or (4).

(f) In addition to a sale authorized under Subsection (d), on request by an owner or operator of a distributed generation facility, the municipally owned utility or electric cooperative shall provide wholesale transmission service to the distributed generation facility owner in the same manner as to other power generation companies for the sale of power from the distributed
generation facility at wholesale, including for the provision of ancillary services, in the ERCOT market. The distributed generation facility owner shall comply with all applicable commission rules and protocols and with governing documents of the independent organization certified under Section 39.151 for the ERCOT power region. This section does not require a municipally owned utility or electric cooperative to transmit electricity to a retail point of delivery in the certificated service area of the municipally owned utility or electric cooperative.

(g) In addition to a sale authorized under Subsection (d) or (f), a municipally owned utility or electric cooperative or related generation and transmission electric cooperative may purchase electric power provided by the owner or operator of the distributed generation facility at wholesale at a mutually agreed on price. The price may be based wholly or partly on the ERCOT market clearing price of energy at the time of day and at the location at which the electric power is made available.

(h) A municipally owned utility or electric cooperative shall make available a standard interconnection application and agreement for distributed generation facilities that is substantially similar to the commission's interconnection agreement form and consistent with this section to facilitate the connection of distributed generation facilities. A municipally owned utility or electric cooperative shall allow interconnection of a distributed generation facility and provide to a distributed generation facility on a nondiscriminatory basis wholesale transmission service, including at distribution voltage, in the
same manner as for other power generation companies to transmit to
the ERCOT power grid the electric power generated by the
distributed generation facility. A municipally owned utility or
electric cooperative may recover from the owner or operator of the
distributed generation facility all reasonable costs necessary for
and directly attributable to the interconnection of the facility,
including the reasonable costs of necessary system upgrades and
improvements directly attributable to the distributed generation
facility.

(i) Not later than the 30th day after the date a complete
application for interconnection of a distributed generation
facility is received, the municipally owned utility or electric
cooperative shall provide the applicant with a written good faith
cost estimate for interconnection-related costs. The municipally
owned utility or electric cooperative may not incur any
interconnection-related costs without entering into a written
agreement for the payment of those costs by the applicant.

(j) The process to interconnect a distributed generation
facility must be completed not later than the 240th day after the
date the municipally owned utility or electric cooperative receives
payment of all estimated costs to complete the interconnection,
except that:

(1) the period may be extended by written agreement
between the parties; or

(2) the period may be extended after a good faith
showing by the municipally owned utility or electric cooperative
that the interconnection requires improvements, upgrades, or
construction of new facilities that cannot reasonably be completed within that period, in which case the period may be extended for a time not to exceed the time necessary for the improvements, upgrades, or construction of new facilities to be completed.

(k) A municipally owned utility or electric cooperative shall charge the owner or operator of a distributed generation facility rates on a reasonable and nondiscriminatory basis for providing wholesale transmission service to the distributed generation facility owner in the same manner as for other power generation companies to transmit to the ERCOT power grid the electric power generated by the distributed generation facility in accordance with a tariff filed by the municipally owned utility or electric cooperative with the commission.

(l) The owner or operator of the distributed generation facility shall contract with the municipally owned utility or electric cooperative or the municipally owned utility's or electric cooperative's designee for any scheduling, settlement, communication, telemetry, or other services required to participate in the ERCOT wholesale market, but only to the extent that the utility, cooperative, or designee offers the services on a nondiscriminatory basis and at a commercially reasonable cost. If the municipally owned utility or electric cooperative or the municipally owned utility's or electric cooperative's designee does not offer or declines to offer the services, or fails to do so on a nondiscriminatory basis and at a commercially reasonable cost as determined by quotes from at least three third parties providing the same services, the owner or operator of the distributed
A distributed generation facility may contract with a third party provider to obtain the services.

(m) A distributed generation facility must comply with emissions limitations established by the Texas Commission on Environmental Quality for a standard emissions permit for an electric generation facility unit installed after January 1, 1995.

(n) A municipally owned utility or electric cooperative is not required to interconnect a distributed generation facility under this section if, on the date the utility or cooperative receives an application for interconnection of the facility, the municipally owned utility or electric cooperative has interconnected distributed generation facilities with an aggregate capacity that equals the lesser amount of:

1. 5 percent of the municipally owned utility's or electric cooperative's average of the 15-minute summer peak load coincident with the independent system operator's 15-minute summer peak load in each of the months of June, July, August, and September; or

2. 300 megawatts, adjusted annually by the percentage of total system load growth in the ERCOT power region beginning in 2022.

(o) A municipally owned utility or electric cooperative that, on the date the utility or cooperative receives an application for interconnection of a distributed generation facility, has interconnected distributed generation facilities with an aggregate capacity less than the threshold described by Subsection (n) is required to increase that capacity only up to that
(p) This section is not intended to change registration standards or other qualifications required by the independent organization certified under Section 39.151 for the ERCOT power region related to the participation of distributed generation facilities in the wholesale market. This section is not intended to allow distributed generation facilities to participate in a manner that is not technically feasible or that is otherwise in conflict with wholesale rules and requirements adopted by the independent organization certified under Section 39.151 for the ERCOT power region.

SECTION 4. It is the intent of the legislature in enacting Section 35.037, Utilities Code, to allow grocers the ability to deploy back-up generation in the ERCOT power region in areas that have not implemented retail customer choice.

SECTION 5. The changes in law made by this Act apply only to an agreement governing the sale or lease of distributed renewable generation, as defined by Section 39.916, Utilities Code, or a power purchase agreement entered into on or after the effective date of this Act. An agreement entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2021.
President of the Senate

Speaker of the House

I hereby certify that S.B. No. 398 passed the Senate on April 9, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 28, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 398 passed the House, with amendment, on May 25, 2021, by the following vote: Yeas 126, Nays 16, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor