

BILL ANALYSIS

C.S.H.B. 3508
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

ERCOT estimates Texas will have one million electric vehicles on the road by 2028. As a result, the Texas Department of Transportation has adopted the Texas Electric Vehicle Infrastructure Plan, in consultation with a number of stakeholders, including governmental entities, utilities, service providers, and advocacy groups, to ensure that all Texans can travel across our vast state, regardless of what powers their vehicle. The \$408 million in federal dollars allocated for this plan, combined with the variety of infrastructure investments already being made by private and public industries, will stimulate the growth of electric vehicle charging infrastructure. A framework is necessary to encourage private businesses and entrepreneurs to continue to invest as the industry expands. C.S.H.B. 3508 seeks to establish a framework designed to encourage competitive private sector investment in the deployment of public electric vehicle charging stations.

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 rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 3508 amends the Utilities Code to set out provisions establishing a framework designed to encourage competitive private sector investment in the deployment of public electric vehicle (EV) charging stations both inside and outside of the ERCOT power region based on the finding by the legislature that it is in the state's best interests to continue the long-standing policy of supporting private sector investment in infrastructure.

Public Charging of Electric Vehicles Outside of ERCOT

C.S.H.B. 3508 limits the authority of electric utilities that operate solely outside of ERCOT to provide EV charging services directly to a customer by establishing a right of first refusal process and by establishing requirements relating to the construction of public EV charging stations used to provide that service and rate-setting requirements with which a utility must comply to legally provide the public EV charging services directly to customers. The bill expressly prohibits any such electric utility from providing public EV charging service directly to customers in any manner other than that provided for by the bill.

Affiliates

C.S.H.B. 3508 authorizes an electric utility, however, to be affiliated with an entity that provides EV charging service from a public charging station if the affiliate is not subject to regulation by the Public Utility Commission of Texas (PUC) but is subject to certain prohibitions on market power abuse, cross-subsidizations, co-branding, and preferential treatment between regulated and competitive activities described by Public Utility Regulatory Act (PURA) provisions relating to PUC authority to address market power. The bill requires the electric utility to offer the same nondiscriminatory rates, terms, and conditions offered to the affiliate to other EV charging providers in the utility's service area for the operation of EV charging stations, consistent with certain nondiscrimination requirements under those provisions and other prohibitions on preferences and discrimination under PURA. An affiliate of an electric utility that provides EV charging service and is not subject to PUC regulation is subject to the same tariffs of the electric utility that apply to any other entity receiving from the utility electric service that is used to provide EV charging service.

Right of First Refusal Process

C.S.H.B. 3508 requires an electric utility seeking to provide EV charging service directly to a customer to file with the PUC a proposal identifying the specific location at which the utility seeks to provide that service and a general description of the public EV charging station the utility proposes to construct at the location. The bill requires the PUC to determine whether the provision of EV charging service under a submitted proposal is in the public interest because the service is adequate for the needs of the area. Not later than the 90th day after the date the PUC determines that the provision of the proposed charging service is in the public interest, a person other than the electric utility may notify the PUC of the following:

- that the person both:
 - intends to provide EV charging service that is adequate for the needs of the area in reasonable proximity to the proposed location of the public charging station and request the necessary make-ready infrastructure from the electric utility; and
 - is firmly committed to placing into service equipment necessary to provide the EV charging service before the later of 18 months after the date the person submits the notice to the PUC or the date of completion of the installation of the necessary make-ready infrastructure to provide the charging service; and
- that the person is capable of acquiring the right to use the property at which the charging service will be provided and financing the cost of the necessary equipment that will be placed into service.

C.S.H.B. 3508 requires an electric utility that has filed notice of the desire to provide direct EV charging service with the PUC to provide notice of the filing on its website and to each motor fuel dealer who offers for retail sale motor fuel at a site that is located not more than 15 miles from the proposed location of the public EV charging station. The bill requires the notice to include the date the electric utility filed its proposal with the PUC and the date by which a person may file a proposal with the PUC to provide reasonably comparable EV charging service.

C.S.H.B. 3508 requires the PUC to issue a determination regarding each notice received by a person in response to an electric utility's filing of whether the proposed EV charging service is adequate for the needs of the area and whether the person has made the previously described requisite commitment and has the previously described requisite capabilities. The bill authorizes the PUC by rule to establish a distance that constitutes reasonable proximity to a type of location for purposes of determining whether the proposed EV charging service is in the public interest and also authorizes the PUC to issue an order establishing a distance other than one authorized by rule that constitutes reasonable proximity to a location for those purposes for a specific electric utility. In establishing distances that constitute reasonable proximity to a location, the PUC is required to do the following:

- consider population density and site access;

- establish the reasonable proximity between two locations on an interstate highway for those purposes as not more than two miles; and
- consider the Texas Department of Transportation's designation by category of nearby roads other than interstate highways when establishing the reasonable proximity between two locations at which EV charging service will be provided on roads other than interstate highways.

C.S.H.B. 3508 authorizes an electric utility that files a proposal with the PUC to proceed with construction of the public EV charging station and the provision of EV charging service unless the PUC determines, based on the information submitted by a person in response to the utility's filing, that either of the following are true:

- the EV charging service proposed in response to the utility's proposal is adequate for the needs of the area and that the person who submitted the notice has made the requisite commitment and has the requisite capabilities; or
- the EV charging service proposed by the utility unreasonably duplicates EV charging service provided by another person or a facility under construction that another person will use to provide EV charging service.

The bill requires an electric utility that is authorized to proceed with construction to notify the PUC that the utility intends to do so and authorizes the utility to construct and operate the proposed public EV charging station after the 120th day after the date the utility files the notice of intent to proceed.

Rates

C.S.H.B. 3508 requires the PUC, on application by an electric utility, to set in a manner authorized under PURA the rates the utility may charge for EV charging service. The bill requires the rates to be reasonable and ensure that competition is not impaired and authorizes the PUC to set rates differently for different locations and times of day and for different types of EV charging service. The bill requires the PUC to permit an electric utility authorized to construct and operate a public EV charging station to recover, using the rate of return on investment established in the PUC's final order in the utility's most recent base rate proceeding, reasonable and necessary costs incurred for the construction, financing, operation, and maintenance of that charging station.

Site Host Programs

C.S.H.B. 3508 establishes that it does not prohibit a person who is not an electric utility or an affiliate of an electric utility from entering into an agreement with an electric utility for the utility to own or operate a public EV charging station on the person's property if the following conditions are satisfied:

- the utility does not provide EV charging service using the charging station or brand or market the charging station as owned or operated by the utility, including by presenting the utility's name, logo, or any other distinguishing mark to indicate that the utility owns or operates the charging station;
- the person solely determines prices for the EV charging service and physical access to and use of the public charging station necessary to carry out responsibilities associated with ownership and operation of the charging station; and
- the person pays for all electric utility-related costs under a tariff approved by the PUC that provides for full recovery of the costs of the charging station from the person, including incremental revenues paid by the person to the utility associated with the EV charging service.

The bill requires the PUC to require each electric utility for which the PUC has approved a tariff to offer service under the terms of the tariff to other persons seeking agreements in the utility's service area on a nondiscriminatory basis and further requires the PUC to ensure that revenue collected by an electric utility under such an agreement allows the utility to recover the costs of owning, constructing, financing, operating, and maintaining the public EV charging station from

the person and not the utility's other customers. The bill exempts a public EV charging station operated under one of these site host agreements with an electric utility from the requirements of the bill's provisions establishing the right of first refusal process.

Subsidization of Make-Ready Infrastructure

C.S.H.B. 3508 establishes that its provisions do not prohibit an electric utility from subsidizing the costs of make-ready infrastructure through rates or charges for services provided by the utility's regulated services.

Municipal Authority

C.S.H.B. 3508 authorizes a municipality that is a customer of an electric utility to enter into an agreement with the utility under which the utility owns and operates a public EV charging station and provides EV charging service on the municipality's property and none of the costs of constructing, financing, operating, or maintaining the charging station are recovered from the other customers of the utility.

Public Charging of Electric Vehicles Inside ERCOT

C.S.H.B. 3508 prohibits a transmission and distribution utility (TDU) from directly owning, operating, or providing EV charging service from a public EV charging station or including costs of such a station for recovery through rates approved by the PUC. The bill authorizes a TDU, however, to own, operate, lease, install, or otherwise procure service from a public EV charging station on its premises for the sole purpose of serving its vehicles. The bill also authorizes a TDU to be affiliated with a competitive affiliate that provides EV charging service from a public EV charging station through a separate entity or third party if the following conditions are satisfied:

- the affiliate is not subject to PUC regulation but is subject to certain prohibitions on market power abuse, cross-subsidizations, co-branding, and preferential treatment between regulated and competitive activities described by PURA provisions relating to PUC authority to address market power; and
- the alternative fuels data center map maintained by the U.S. Department of Energy does not show that a public EV charging station owned or operated by an EV charging provider and used to provide EV charging service is located less than 50 miles from the location where the affiliate proposes to provide EV charging service.

The bill requires a TDU to offer the same nondiscriminatory rates, terms, and conditions offered to the affiliate to other EV charging providers in the TDU's service area for the operation of public EV charging stations, consistent with certain PURA nondiscrimination requirements under those PURA provisions and other prohibitions on preferences and discrimination under PURA.

C.S.H.B. 3508 requires an affiliate with whom a TDU is affiliated under the bill's provisions to maintain for at least two years documentation of the alternative fuels data center map that is available on the date on which the installation of the public EV charging station begins. The bill prohibits an affiliate of a TDU that provides, owns, operates, or maintains public EV charging stations and is not subject to PUC regulation from being subsidized by any rate or charge for any regulated services provided by the TDU.

C.S.H.B. 3508 establishes that the bill's provisions do not prohibit a TDU from constructing, owning, or operating make-ready infrastructure on the TDU's side of the point of delivery that is funded through rates or charges for services under the TDU's tariffs. The bill requires the PUC to permit a TDU to recover, using the rate of return on investment established in the PUC's final order in the TDU's most recent base rate proceeding, reasonable and necessary costs incurred for the construction or installation of make-ready infrastructure on the TDU's side of the point of delivery.

Definitions

C.S.H.B. 3508 defines the following terms:

- "direct-current fast charging station" as a charging system capable of delivering at least 50 kilowatts of direct-current electrical power to an EV's rechargeable battery at a voltage of 200 volts or greater;
- "electric vehicle" as a vehicle that is propelled by one or more electric motors using energy stored in the form of a rechargeable battery;
- "electric vehicle charging provider" as the owner or operator of a public EV charging station, excluding an electric utility or TDU;
- "electric vehicle charging service" as sales made from a public EV charging station to the public; and
- "level two charging station" as a charging system capable of delivering at least 3 and not more than 19.2 kilowatts of alternating-current electrical power to an EV's rechargeable battery at a voltage of at least 208 volts on a circuit of at least 40 amperes.

Additionally, C.S.H.B. 3508 defines "make-ready infrastructure" as the electrical infrastructure required to service a public EV charging station's electrical load on the electric utility's or TDU's side of the point of delivery. The term includes all site-specific electrical infrastructure required to accommodate engineering, physical, operational, or other constraints for the charging station, regardless of whether the infrastructure is on the utility's or customer's side of the point of delivery, and does not include the charging station or any utility infrastructure on the customer's side of the point of delivery, up to and including the meter.

Finally, C.S.H.B. 3508 defines "public electric vehicle charging station" as any level two charging station or direct-current fast charging station that delivers electricity from a source outside an EV into an EV, is separate and distinct from make-ready infrastructure, and is accessible for commercial use by the public, or similar vehicle charging equipment capable of delivering electricity into an EV faster than a level two charging station. The term does not include vehicle charging equipment that is either of the following:

- used by an electric utility, a TDU, or an affiliate to charge an EV owned by the utility or affiliate or, as an incident of employment, an EV owned by an employee of the utility or affiliate; or
- located on the premises of a customer of an electric utility, a TDU, or an affiliate and used by the customer or the customer's tenants, affiliates, or guests and not used commercially for EV charging service.

Legislative Findings

C.S.H.B. 3508 includes the following additional legislative findings:

- encouraging investment in the deployment of public EV charging stations is essential to foster the rapid installation and widespread use of public EV charging stations on property whose owners or tenants desire to install these charging stations;
- electric utilities, TDUs, competitive entities, and the PUC have important roles to fill in supporting the installation and use of infrastructure for EV charging; and
- it is necessary to do the following:
 - implement competitively neutral policies to encourage competitive private sector investment in public EV charging station deployment;
 - develop and implement competitively neutral electricity tariffs that are optimized for public EV charging stations and based on cost causation principles while ensuring transparency in pricing and recognizing changing market needs; and
 - encourage competitive private investment, ownership, and operation of public EV charging stations, including equipment that allows for fast charging.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3508 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Scope of Bill

The substitute changes the scope of the bill's provisions. Whereas the introduced regulated EV charging generally with respect to electric utilities and TDUs, the substitute regulates the public charging of EVs by these entities. Moreover, whereas the introduced provided uniform regulations applicable to both electric utilities and TDUs, the substitute instead includes a set of regulations for the public charging of EVs outside of ERCOT, which are applicable to electric utilities operating solely outside of ERCOT, and another set of regulations for the public charging of EVs inside ERCOT, which are applicable to TDUs.

Electric Utilities

Whereas the introduced included a blanket prohibition against an electric utility directly providing retail electricity charging service from an EV charging station, the substitute does not. The substitute, instead, in the provisions applicable to the public charging of EVs outside of ERCOT, establishes a set of regulations with which an electric utility operating solely outside ERCOT must comply in order to provide EV charging service directly to a customer. Accordingly, the substitute includes provisions relating to the following, none of which were included in the introduced:

- a right of first refusal policy under which:
 - an electric utility that wishes to provide that public charging service directly to a customer must file a proposal with the PUC for the PUC to make a determination of whether the proposal is in the public interest;
 - notice of the filing must be published online and given to motor fuel dealers located within 15 miles from the proposed public charging station;
 - a person, after the utility's filing with the PUC, has the opportunity to exercise their right of first refusal by filing a notice with the PUC of their desire to provide public charging service within a reasonable proximity, as determined by the PUC, to the location the utility proposed to provide such service;
 - only if the utility's proposal is found to be in the public interest, and only if no person exercised a valid right of first refusal, the utility is required to notify the PUC that it intends to proceed with construction of the public charging station subject to the PUC filing; and
 - the utility is authorized to construct and operate the proposed public charging station after the 120th day after the date the utility notifies the PUC of its intent to proceed;
- a requirement for the PUC to permit an electric utility authorized to construct and operate a public EV charging station to recover, using the rate of return on investment established in the PUC's final order in the utility's most recent base rate proceeding, reasonable and necessary costs incurred for the construction, financing, operation, and maintenance of the charging station;
- a policy governing site host programs under which a person who is not an electric utility or an affiliate thereof may enter into an agreement with an electric utility for the utility to own or operate a public EV charging station on the person's property under certain circumstances; and

- the authority of a municipality that is a customer of an electric utility to enter into an agreement with the utility under which the utility owns and operates a public EV charging station and provides EV charging service on the municipality's property.

The substitute omits the provision from the introduced prohibiting an electric utility from including an EV charging station for recovery through rates approved by the PUC and includes provisions absent from the introduced that provide for the setting of rates by the PUC that an electric utility may charge for EV charging service.

Whereas the introduced authorized an electric utility to provide retail electricity charging service from an EV charging station through a separate affiliate that satisfies certain conditions, the substitute authorizes an electric utility to be affiliated with a competitive affiliate that provides EV charging service from a public charging station. The substitute retains the conditions in the introduced that a qualifying affiliate must satisfy but expands upon those conditions by requiring that the affiliate also be subject to certain prohibitions on co-branding established under PURA, which was not required by the introduced.

The substitute omits the provision from the introduced prohibiting an affiliate of an electric utility that provides, own, operates, or maintains EV charging stations and is not subject to PUC regulation from being subsidized by any rate or charge for any regulated services provided by an electric utility and includes a provision absent from the introduced that instead establishes that such an affiliate is subject to the same tariffs of the electric utility that apply to any other entity receiving from the utility electric service that is used to provide EV charging service.

TDUs

The substitute, in its provisions governing the public charging of EVs inside ERCOT, largely maintains the structure of the regulation established in the introduced for TDUs with certain updates to reflect the substitute's change in scope of the bill's provisions. However, the substitute makes the following changes:

- whereas the introduced prohibited a TDU from directly providing retail electricity charging service from an EV charging station, the substitute prohibits a TDU from directly owning, operating, or providing EV charging service from a public charging station;
- the substitute includes a provision absent from the introduced authorizing a TDU to own, operate, lease, install, or otherwise procure service from a public EV charging station on the TDU's premises for the sole purpose of serving its vehicles;
- with respect to the provision of charging service through an affiliate:
 - whereas the introduced authorized a TDU to provide retail electricity charging service from an EV charging station through a separate affiliate, the substitute authorizes a TDU to be affiliated with a competitive affiliate that provides EV charging service from a public charging station through a separate entity or third party;
 - the substitute retains the conditions included in the introduced that a qualifying affiliate must meet but expands upon those conditions by requiring that the affiliate be subject to certain prohibitions on co-branding established under PURA, which was not required by the introduced;
 - includes a provision absent from the introduced further conditioning the authority of a TDU to provide charging service through an affiliate on the alternative fuels data center map maintained by the U.S. Department of Energy not showing that a public charging station owned or operated by an EV charging provider and used to provide EV charging service is located less than 50 miles from the location where the affiliate proposes to provide EV charging service; and
 - includes a corresponding requirement also absent from the introduced for an affiliate with whom a TDU is affiliated under the bill's provisions to maintain for at least two years documentation of the alternative fuels data center map that is

available on the date on which the installation of the public charging station begins;

- whereas the introduced provided that the bill does not prohibit a TDU from subsidizing the costs of make-ready infrastructure through rates or charges for services provided by the TDU's regulated services, the substitute instead provides that the bill does not prohibit a TDU from constructing, owning, or operating make-ready infrastructure on its side of the point of delivery that is funded through rates or charges for services under the TDU's tariffs; and
- the substitute includes a provision absent from the introduced requiring the PUC to permit a TDU to recover, using the rate of return on investment established in the PUC's most recent base rate proceeding, reasonable and necessary costs incurred for the construction or installation of make-ready infrastructure on the TDU's side of the point of delivery.

Legislative Findings

The substitute revises the legislative findings set out in the introduced applicable to the investment in the deployment of EV charging stations by specifying that those findings apply with respect to public EV charging stations and includes an additional legislative finding not in the introduced that electric utilities, TDUs, competitive entities, and the PUC have important roles to fill in supporting the installation and use of infrastructure for EV charging. Specifically, with respect to the legislative findings included in the introduced, the substitute does the following:

- replaces the finding that it is in the state's best interest to continue the longstanding policy of robust competition through the free market by establishing a certain framework with a finding that it is in the state's best interest to continue the long-standing policy of supporting private sector investment in infrastructure by establishing such a framework; and
- replaces the finding that it is necessary to develop and implement competitively neutral electricity tariffs aimed at and optimized for the low-cost operation of EV charging stations while ensuring transparency in pricing with a finding that it is necessary to develop and implement competitively neutral electricity tariffs that are optimized for public EV charging stations and based on cost causation principles while ensuring transparency in pricing and recognizing changing market needs.

Definitions

Whereas the introduced defined "electric vehicle charging provider" as the owner of an EV charging station, the substitute defines that term as the owner or operator of a public EV charging station and specifies that term does not include an electric utility or TDU, which was not specified in the introduced.

The substitute revises the requisite capabilities of a charging system to qualify as a "level two charging station" under the bill. Whereas the introduced required a level two charging station to be capable of delivering at least 3 and not more than 50 kilowatts of alternating-current electrical power to an EV's rechargeable battery at a voltage of 200 volts or greater, the substitute requires such a station instead to be capable of delivering at least 3 and not more than 19.2 kilowatts of alternating-current electrical power to an EV's rechargeable battery at a voltage of at least 208 volts on a circuit of at least 40 amperes.

The substitute includes a definition not in the introduced for the term "electric vehicle charging service."

The substitute updates the definition established by the introduced for "electric vehicle charging station" to reflect the substitute's change in scope of the bill by defining instead "public electric vehicle charging station." The substitute retains the meaning of the term included in the

introduced but expands it further by requiring that the charging station be accessible for commercial use by the public, or similar vehicle charging equipment capable of delivering electricity into an EV faster than a level two charging station. Additionally, the substitute includes a specification absent from the introduced that the term does not include vehicle charging equipment that is either of the following:

- used by an electric utility, a TDU, or an affiliate to charge an EV owned by the utility or affiliate or, as an incident of employment, an EV owned by an employee of the utility or affiliate; or
- located on the premises of a customer of an electric utility, a TDU, or an affiliate and used by the customer or the customer's tenants, affiliates, or guests and not used commercially for EV charging service.

The substitute changes the meaning of "make-ready infrastructure" from the electrical infrastructure required to service an EV charging station's electrical load on the electric utility's or customer's side of the meter, as in the introduced, to the electrical infrastructure required to service a public EV charging station's electrical load on the electric utility's or TDU's side of the point of delivery. Moreover, the substitute includes provisions absent from the introduced specifying that the term includes all site-specific electrical infrastructure required to accommodate engineering, physical, operational, or other constraints for the public EV charging station, regardless of whether the infrastructure is on the utility's or customer's side of the point of delivery. The substitute retains the provision in the introduced establishing that the term does not include the EV charging station, but expands the provision to specify also that the term does not include any utility infrastructure on the customer's side of the point of delivery, up to and including the meter, which was not specified in the introduced.