

BILL ANALYSIS

Senate Research Center

S.B. 1002
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Electric Reliability Council of Texas (ERCOT) estimates Texas will have 1 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 the Public Utility Commission of Texas (PUC), ERCOT, Texas Commission on Environmental Quality, State Energy Conservation Office, Texas Parks and Wildlife, Councils of Government, counties, metropolitan planning organizations, utilities, energy service providers, and advocacy groups in Texas, 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 private and public industries already making infrastructure investments because of Texas's business-friendly policies, will stimulate the growth of electric vehicle charging infrastructure. A charging provider market framework is necessary to encourage private businesses and entrepreneurs to continue to invest as the industry expands.

S.B. 1002 seeks to build a framework designed to meet projected demand and promote charging infrastructure investments by property and business owners, while protecting Texas consumers from runaway electricity costs. The bill recognizes there are important roles for electric utilities, transmission and distribution utilities, competitive entities, and the PUC to fulfill in supporting the growth of infrastructure for electric vehicle charging while establishing a regulatory framework that prioritizes the Texas consumer as the various entities participate in the market.

(Original Author's/Sponsor's Statement of Intent)

S.B. 1002 amends current law relating to the operation of public electric vehicle charging stations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 (Section 42.0103, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 2, Utilities Code, by adding Chapter 42, as follows:

CHAPTER 42. PUBLIC CHARGING OF ELECTRIC VEHICLES

Sec. 42.0101. LEGISLATIVE FINDINGS. (a) Provides that the legislature finds that it is in the best interests of this state to continue the long-standing policy of supporting private sector investment in infrastructure by establishing a framework designed to encourage competitive private sector investment in the deployment of public electric vehicle charging stations.

(b) Provides that the legislature finds that encouraging investment in the deployment of public electric vehicle charging stations is essential to foster the rapid installation and widespread use of public electric vehicle charging stations on property whose owners or tenants desire to install public electric vehicle charging stations.

(c) Provides that the legislature finds that electric utilities, transmission and distribution utilities, competitive entities, and the Public Utility Commission of Texas (PUC) have important roles to fill in supporting the installation and use of infrastructure for electric vehicle charging.

(d) Provides that the legislature finds that it is necessary to:

(1) implement competitively neutral policies to encourage competitive private sector investment in public electric vehicle charging station deployment;

(2) develop and implement competitively neutral electricity tariffs that are optimized for public electric vehicle charging stations and based on cost causation principles while ensuring transparency in pricing and recognizing changing market needs; and

(3) encourage competitive private investment, ownership, and operation of public electric vehicle charging stations, including equipment that allows for fast charging.

Sec. 42.0102. DEFINITIONS. Defines "direct-current fast charging station," "electric vehicle," "electric vehicle charging provider," "electric vehicle charging service," "level two charging station," "make-ready infrastructure," and "public electric vehicle charging station."

Sec. 42.0103. PUBLIC CHARGING OF ELECTRIC VEHICLES OUTSIDE OF ERCOT. (a) Provides that this section applies only to an electric utility that operates solely outside of ERCOT.

(b) Provides that an electric utility:

(1) is prohibited from providing electric vehicle charging service directly to a customer except as provided by this section;

(2) is authorized to be affiliated with an entity that provides electric vehicle charging service from a public electric vehicle charging station if the affiliate:

(A) is not subject to regulation by the PUC; and

(B) is subject to prohibitions on market power abuse, cross-subsidizations, co-branding, and preferential treatment between regulated and competitive activities described by Section 39.157(d) (relating to requiring the PUC to adopt rules and enforcement procedures to govern transactions or activities between a transmission and distribution utility and its competitive affiliates); and

(3) consistent with the requirements of Subchapter B (Prohibitions on Preferences and Discrimination), Chapter 38, and Section 39.157(d)(3) (relating to requiring that the PUC rules ensure that a utility providing electric transmission or distribution services meets certain requirements), is required to offer the same nondiscriminatory rates, terms, and conditions offered to an affiliate described by Subdivision (2) to other electric vehicle charging providers in the utility's service area for the operation of public electric vehicle charging stations.

(c) Provides that an affiliate of an electric utility that provides electric vehicle charging service and is not subject to regulation by the PUC 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 electric vehicle charging service.

(d) Provides that this section does not prohibit an electric utility from subsidizing the costs of make-ready infrastructure through rates or charges for services provided by the electric utility's regulated services.

(e) Authorizes an electric utility to provide electric vehicle charging service directly to a customer only if:

(1) the public electric vehicle charging station used to provide electric vehicle charging service is constructed in compliance with the requirements of this section; and

(2) the rates charged by the utility for electric vehicle charging service are set by the PUC under Subsection (m).

(f) Requires an electric utility seeking to provide electric vehicle charging service directly to a customer to:

(1) file with the PUC a proposal identifying the specific location at which the utility seeks to provide electric vehicle charging service and a general description of the public electric vehicle charging station the utility proposes to construct at the location; and

(2) provide notice of the filing made under Subdivision (1):

(A) on the utility's Internet website; and

(B) to each dealer to which Chapter 2310 (Motor Fuel Metering and Quality), Occupations Code, applies 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 electric vehicle charging station.

(g) Requires that a notice provided under Subsection (f)(2) include:

(1) the date the electric utility filed a proposal to provide electric vehicle charging service under Subsection (f)(1); and

(2) the date by which a person is authorized to file a proposal to provide reasonably comparable electric vehicle charging service under Subsection (h).

(h) Requires the PUC to determine whether the provision of electric vehicle charging service under a proposal submitted under Subsection (f)(1) is in the public interest because the service is adequate for the needs of the area. Authorizes a person other than the electric utility, not later than the 90th day after the date the PUC determines that the provision of the proposed electric vehicle charging service is in the public interest, to notify the PUC that:

(1) the person:

(A) intends to provide electric vehicle charging service that is adequate for the needs of the area in reasonable proximity to the proposed location of the public electric vehicle charging station and request the necessary make-ready infrastructure from the electric utility; and

(B) is firmly committed to placing into service equipment necessary to provide the electric vehicle charging service before the later of:

(i) 18 months after the date the person submits the notice to the PUC; or

(ii) the date of completion of the installation of the necessary make-ready infrastructure to provide the electric vehicle charging service; and

(2) the person is capable of acquiring the right to use the property at which the electric vehicle charging service will be provided and of financing the cost of the equipment described by Subdivision (1)(B).

(i) Requires the PUC to issue a determination regarding each notice received under Subsection (h) of whether the proposed electric vehicle charging service is adequate for the needs of the area and whether the person has made the commitment and has the capabilities described by that subsection.

(j) Authorizes the PUC by rule to establish a distance that constitutes reasonable proximity to a type of location for the purposes of Subsection (h). Authorizes the PUC to also issue an order establishing a distance other than one authorized by rule that constitutes reasonable proximity to a location for purposes of Subsection (h) for a specific electric utility. Requires the PUC, in establishing distances that constitute reasonable proximity to a location, to:

(1) consider population density and site access;

(2) establish the reasonable proximity between two locations on an interstate highway for the purposes of Subsection (h) as not more than 10 miles; and

(3) 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 electric vehicle charging service will be provided on roads other than interstate highways.

(k) Authorizes an electric utility that files a proposal under Subsection (f) to proceed with construction of the public electric vehicle charging station and the provision of electric vehicle charging service unless the PUC determines, based on the information submitted under Subsection (h), that:

(1) the electric vehicle charging service proposed under Subsection (h) in response to the utility's proposal is adequate for the needs of the area and that the person who submitted the notice under Subsection (h) has made the commitment and has the capabilities described by that subsection; or

(2) the electric vehicle charging service proposed under Subsection (f) by the utility unreasonably duplicates electric vehicle charging service provided by another person or a facility under construction that another person will use to provide electric vehicle charging service.

(l) Provides that an electric utility authorized to proceed with the construction of a public electric vehicle charging station under Subsection (k) is required to notify the PUC that the utility intends to proceed with the construction and is authorized to construct and operate the proposed public electric vehicle charging station after the 120th day after the date the utility files the notice of intent under this subsection.

(m) Requires the PUC, on application by an electric utility, to set in a manner authorized under Chapter 36 (Rates) the rates the utility is authorized to charge for electric vehicle charging service. Requires that the rates be reasonable and ensure that competition is not impaired. Authorizes the PUC to set rates differently for different locations and times of day and for different types of electric vehicle charging service.

(n) Requires the PUC to permit an electric utility authorized to construct and operate a public electric vehicle charging station under this section 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 public electric vehicle charging station.

(o) Provides that this section 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 electric vehicle charging station on the person's property if:

(1) the utility does not:

(A) provide electric vehicle charging service using the public electric vehicle charging station; or

(B) brand or market the public electric vehicle 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 public electric vehicle charging station;

(2) the person solely determines:

(A) physical access to and use of the public electric vehicle charging station necessary to carry out responsibilities associated with ownership and operation of the public electric vehicle charging station; and

(B) prices for the electric vehicle charging service; and

(3) 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 public electric vehicle charging station from the person, including incremental revenues paid by the person to the utility associated with the electric vehicle charging service.

(p) Requires the PUC to:

(1) require each electric utility for which the PUC has approved a tariff under Subsection (o) 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

(2) ensure that revenue collected by an electric utility under an agreement under Subsection (o) allows the utility to recover the costs of owning, constructing, financing, operating, and maintaining the public electric vehicle charging station from the person and not the utility's other customers.

(q) Provides that a public electric vehicle charging station operated under an agreement under Subsection (o) is not subject to the requirements of Subsections (f)-(l).

(r) Authorizes a municipality that is a customer of an electric utility, notwithstanding any other provision of this section, to enter into an agreement with the utility under which:

(1) the utility owns and operates a public electric vehicle charging station and provides electric vehicle charging service on the municipality's property; and

(2) none of the costs of constructing, financing, operating, or maintaining the public electric vehicle charging station described by Subdivision (1) are recovered from the other customers of the utility.

Sec. 42.0104. PUBLIC CHARGING OF ELECTRIC VEHICLES INSIDE ERCOT. (a) Provides that a transmission and distribution utility:

(1) is prohibited from directly owning, operating, or providing electric vehicle charging service from a public electric vehicle charging station;

(2) is prohibited from including costs of a public electric vehicle charging station for recovery through rates approved by the PUC;

(3) is authorized to be affiliated with a competitive affiliate that provides electric vehicle charging service from a public electric vehicle charging station through a separate entity or third party only if:

(A) the affiliate:

(i) is not subject to regulation by the PUC; and

(ii) is subject to prohibitions on market power abuse, cross-subsidizations, co-branding, and preferential treatment between regulated and competitive activities described by Section 39.157(d); and

(B) the alternative fuels data center map maintained by the United States Department of Energy does not show that a public electric vehicle charging station owned or operated by an electric vehicle charging provider and used to provide electric vehicle charging service is located less than 50 miles from the location where the affiliate proposes to provide electric vehicle charging service; and

(4) consistent with the requirements of Subchapter B, Chapter 38, and Section 39.157(d)(3), is required to offer the same nondiscriminatory rates, terms, and conditions offered to the affiliate described by Subdivision (3) to other electric vehicle charging providers in the transmission and distribution utility's service area for the operation of public electric vehicle charging stations.

(b) Requires an affiliate described by Subsection (a)(3) 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 electric vehicle charging station begins.

(c) Prohibits an affiliate of a transmission and distribution utility that provides, owns, operates, or maintains public electric vehicle charging stations and is not

subject to regulation by the PUC from being subsidized by any rate or charge for any regulated services provided by the transmission and distribution utility.

(d) Provides that this section does not prohibit a transmission and distribution utility from constructing, owning, or operating make-ready infrastructure on the transmission and distribution utility's side of the point of delivery that is funded through rates or charges for services under the transmission and distribution utility's tariffs.

(e) Authorizes a transmission and distribution utility, notwithstanding Subsection (a), to own, operate, lease, install, or otherwise procure service from a public electric vehicle charging station on the utility's premises for the sole purpose of serving the utility's vehicles.

(f) Requires the PUC to permit a transmission and distribution utility 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 or installation of make-ready infrastructure on the utility's side of the point of delivery.

SECTION 2. (a) Makes application of Sections 42.0104(a)(3)(B) and 42.0104(b), Utilities Code, as added by this Act, prospective to January 1, 2026.

(b) Provides that Section 42.0104(c), Utilities Code, as added by this Act, applies only to a rate or charge imposed after January 1, 2024.

SECTION 3. Effective date: September 1, 2023.