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S.B. No. 545

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a distributed solar generation incentive program and to encouraging the use of solar energy devices.

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

SECTION 1. Section 39.002, Utilities Code, is amended to read as follows:

Sec. 39.002. APPLICABILITY. This chapter, other than Sections 39.155, 39.157(e), 39.203, 39.903, 39.904, 39.9051, 39.9052, ~~and~~ 39.914(e), and 39.9156, does not apply to a municipally owned utility or an electric cooperative. Sections 39.157(e), 39.203, and 39.904, however, apply only to a municipally owned utility or an electric cooperative that is offering customer choice. If there is a conflict between the specific provisions of this chapter and any other provisions of this title, except for Chapter 40 and 41, the provisions of this chapter control.

SECTION 2. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.9155 to read as follows:

Sec. 39.9155. DISTRIBUTED SOLAR GENERATION INCENTIVE PROGRAM. (a) It is the goal of the legislature that electric utilities administer incentive programs for residential and commercial customers to increase the amount of distributed solar generation, utility scale solar generation, and energy storage installed within the state in a cost-effective, market-neutral, and

1 nondiscriminatory manner.

2 (b) The commission by rule shall:

3 (1) establish a distributed solar generation
4 incentive program, to be implemented by electric utilities;

5 (2) oversee the implementation of the program required
6 by Subdivision (1); and

7 (3) establish procedures to achieve the goal described
8 by Subsection (a).

9 (c) The rules adopted under Subsection (b) must include
10 provisions for:

11 (1) recovery of the cost of electric utility programs
12 authorized by this section through nonbypassable fees, which may
13 not exceed:

14 (A) 20 cents per month for residential customers;

15 (B) \$2 per month for commercial customers; and

16 (C) \$20 per month for industrial customers;

17 (2) rebates to customers to defray the cost of
18 installing distributed solar generation as provided by Subsection
19 (e);

20 (3) a requirement that customers within the Electric
21 Reliability Council of Texas who install distributed solar
22 generation will have the option to be equipped with an advanced
23 meter and appropriate procedures such that the customers have the
24 option to be settled on their real-time energy usage instead of a
25 load profile and receive the real-time energy price for net energy
26 exported to the grid by the customer;

27 (4) a requirement that:

1 (A) a retail electric provider offer service to a
2 retail electric service customer who has installed distributed
3 solar generation; and

4 (B) a retail electric provider that provides
5 service to a retail electric service customer who has installed
6 distributed solar generation:

7 (i) purchase the customer's surplus
8 electricity at a price equal to or greater than a fair market price
9 determined in accordance with this section; or

10 (ii) credit the customer's bill for the
11 billing cycling in which the customer's surplus electricity is
12 generated at a price equal to or greater than the equivalent of a
13 fair market price determined in accordance with this section and
14 allow any unused credit on the customer's bill to be carried forward
15 to subsequent billing cycles for the customer;

16 (5) appropriate net metering policies and retail rate
17 options for customers served by electric utilities outside the
18 Electric Reliability Council of Texas; and

19 (6) the utility scale solar and energy storage program
20 provided by Subsection (f).

21 (d) Electric utilities may not assess the fees authorized by
22 this section after the fifth anniversary of the date the program
23 required by this section is established by commission rule, except
24 as provided by Subsection (k). The commission shall ensure that all
25 fees collected under this section are used for the programs
26 authorized by this section, except that utilities may not use more
27 than 2.5 percent of the funds collected for administrative expenses

1 related to this section, as approved by the commission.

2 (e) The commission shall set a rebate amount for the
3 installation of solar generation. The commission shall
4 periodically adjust the rebate amount such that the quantity of
5 solar generation installed under this section is maximized, but
6 shall reduce rebate amounts by not less than five percent per year.
7 The commission may set a higher rebate amount for solar generation
8 manufactured wholly or substantially in this state, provided that
9 the higher amount is not more than 20 percent higher than the rebate
10 applicable to all other solar generation. The commission may
11 provide for rebates to be provided directly to customers or to
12 qualified installers of solar generation. Unless otherwise
13 adjusted by the commission, the initial rebates shall be:

14 (1) \$2.40 per watt for installations on residential
15 buildings;

16 (2) \$1.50 per watt for installations on commercial
17 buildings; and

18 (3) \$1 per watt for installations at industrial
19 facilities.

20 (f) The commission may direct not more than 70 percent of
21 the funds collected by the fees authorized by this section to
22 utility scale solar generation if the commission determines such
23 projects are more cost-effective per megawatt installed than
24 distributed solar generation or will provide a greater benefit to
25 the reliability of the electric grid. The commission may establish
26 rebate amounts not to exceed \$1 per watt for such projects or may
27 consider a competitive bidding process, a reverse auction, or other

1 methods to award funds in order to maximize the quantity of
2 generation installed under this section. If the demand for funds
3 under this section exceeds the available funds, the commission
4 shall consider the following in determining which projects receive
5 subsidies:

6 (1) projects that require the lowest amount per
7 megawatt installed of subsidy to be commercially viable;

8 (2) projects that use the transmission capacity built
9 under Section 39.904(g) and require minimal additional
10 transmission facilities;

11 (3) projects that enhance the reliability of the
12 transmission and distribution grid or defer the need for additional
13 transmission and distribution infrastructure;

14 (4) projects in development that can use rebates
15 awarded to secure additional financing for that project;

16 (5) projects that provide maximum output during
17 periods when electricity demand is highest in this state; and

18 (6) projects that can provide ancillary services to
19 the electric grid.

20 (g) The commission shall develop a "Made in Texas"
21 certification program for energy products that include distributed
22 solar generation. The commission shall post a list of energy
23 products that are wholly or substantially produced in Texas and
24 shall conduct education efforts to inform customers of the
25 availability of Texas-manufactured energy products. The
26 commission may partner or contract with third parties or nonprofit
27 organizations to achieve this goal.

1 (h) Notwithstanding any other provision of this title, a
2 retail electric provider or any other person may own distributed
3 generation and enter into a contract with the retail customer on
4 whose property the generation is located to lease the generation or
5 sell the output to the retail customer or to the customer's retail
6 electric provider. The owner of the generation is not an electric
7 utility and is not required to register with the commission as a
8 power generation company or self generator unless the commission
9 determines that such registration is necessary to maintain the
10 reliability of the distribution grid. The commission may establish
11 appropriate reporting and other requirements for distributed
12 generation owners to be eligible to earn renewable energy credits.

13 (i) The commission, in consultation with the Electric
14 Reliability Council of Texas, shall prepare and make available a
15 study indicating geographic areas where utility scale non-wind
16 renewable energy can be located with minimal additional
17 transmission facilities.

18 (j) Selection of projects by the commission under
19 Subsection (f) is not required to be conducted as a contested case
20 proceeding. The commission may appoint an advisory committee to
21 assist the commission in evaluating proposals made under Subsection
22 (f), provided, however, that members of the committee may not have a
23 financial interest in any of the proposals. After conclusion of a
24 process authorized by Subsection (f), the commission shall release
25 a complete record of the proposals and the evaluation of the factors
26 required to be considered under Subsection (f).

27 (k) The commission may extend the fees and program

1 authorized by this section for an additional five years if the
2 commission finds that a substantial amount of manufacturing of
3 solar generation products has located in Texas after the initial
4 five-year program and that the extension of the fees does not
5 present an undue burden to customers.

6 (1) The commission by rule shall provide a methodology for
7 determining a fair market value price for surplus electricity. The
8 fair market value may not be less than an amount equal to 80 percent
9 of the customer's applicable retail rate minus any nonbypassable
10 charges. The commission shall post on the commission's Internet
11 website the fair market value prices derived from the methodology
12 provided under this subsection.

13 (m) In an area in which customer choice has been introduced,
14 a retail electric provider shall pay an owner of distributed solar
15 generation for surplus electricity the local market clearing price
16 for energy at the time of day the surplus electricity is made
17 available to the grid or a price that is not less than the fair
18 market value price determined in accordance with the methodology
19 provided under Subsection (1).

20 (n) An owner of distributed solar generation is qualified to
21 be paid for surplus electricity under Subsection (m) only if the
22 owner's distributed solar generation:

23 (1) is installed on a residential retail electric
24 customer's side of the meter;

25 (2) has a generating capacity of not greater than 50
26 kilowatts; and

27 (3) is rated to produce an amount of electricity less

1 than or equal to the amount of electricity the residential retail
2 electric customer for whom the distributed solar generation is
3 installed is reasonably expected to consume.

4 (o) The commission by rule shall require a retail electric
5 provider that purchases a customer's surplus electricity to include
6 on each bill of the customer line items to inform the owner of:

7 (1) the amount of surplus electricity, in terms of
8 kilowatt hours;

9 (2) the price credited to the owner for each kilowatt
10 hour; and

11 (3) the amount of any credit for surplus electricity
12 applied or carried forward from the previous billing period.

13 (p) Until the commission provides the methodology under
14 Subsection (1) for determining a fair market value price, a retail
15 electric provider shall pay a price for surplus electricity that is
16 not less than five cents per kilowatt hour.

17 (q) If, at the time distributed solar generation is
18 installed on a retail electric customer's side of the meter, the
19 estimated annual amount of electric energy to be generated by the
20 distributed solar generation is less than or equal to the
21 customer's estimated annual electric energy consumption, the
22 commission may not consider the owner of distributed solar
23 generation to be a power generation company or require the owner of
24 distributed solar generation to register as a power generation
25 company.

26 (r) In this section:

27 (1) "Distributed solar generation" means distributed

1 renewable generation, as defined by Section 39.916, using solar
2 energy technology.

3 (2) "Owner of distributed solar generation" includes a
4 retail electric customer who contracts with another person to
5 install or maintain distributed solar generation on the customer's
6 side of the meter, regardless of whether the customer takes
7 ownership of the installed distributed solar generation.

8 (3) "Surplus electricity" means electricity generated
9 by distributed solar generation that is not consumed at the place
10 the distributed solar generation is installed but flows onto the
11 electric distribution system.

12 SECTION 3. Subchapter Z, Chapter 39, Utilities Code, is
13 amended by adding Section 39.9156 to read as follows:

14 Sec. 39.9156. SOLAR GENERATION INCENTIVE PROGRAMS. (a) It
15 is the goal of the legislature that:

16 (1) electric cooperatives and municipally owned
17 utilities administer incentive programs that increase the amount of
18 solar generation installed within the state in a cost-effective,
19 market-neutral, and nondiscriminatory manner;

20 (2) customers of electric cooperatives and
21 municipally owned utilities will have access to incentives for the
22 installation of distributed solar generation; and

23 (3) electric cooperatives and municipally owned
24 utilities expend funds to increase the amount of solar generation
25 and energy storage projects at a total funding level consistent
26 with the requirements for electric utilities in this state under
27 Sections 39.9155(c)(1) and (d).

1 (b) Beginning not later than September 1, 2012, a
2 municipally owned utility or electric cooperative must report
3 annually to the state energy conservation office, in a form and
4 manner determined by the office, information regarding the efforts
5 of the municipally owned utility or electric cooperative related to
6 this section.

7 (c) Nothing in this section shall be construed to prevent
8 the governing body of an electric cooperative or municipally owned
9 utility from adopting rules, programs, and incentives that
10 encourage or provide for the installation of more solar generation
11 capacity than the goals set forth in Section 39.9155 or the rules
12 adopted by the commission under that section.

13 (d) Funding for solar generation provided after May 1, 2007,
14 shall count toward compliance with this section.

15 (e) An electric cooperative or municipally owned utility may
16 recover the costs required by this section through a nonbypassable
17 fee consistent with that authorized by the commission for electric
18 utilities under Section 39.9155(c)(1) or such other cost recovery
19 mechanism as determined by the governing body of the electric
20 cooperative or municipally owned utility.

21 (f) This section applies only to an electric cooperative or
22 municipally owned utility with retail sales of more than 500,000
23 megawatt hours in 2007.

24 SECTION 4. Subchapter Z, Chapter 39, Utilities Code, is
25 amended by adding Section 39.929 to read as follows:

26 Sec. 39.929. INFORMATION ON INTERNET REGARDING PURCHASE OF
27 SURPLUS ELECTRICITY PRODUCED BY DISTRIBUTED SOLAR GENERATION.

1 (a) In this section:

2 (1) "Distributed solar generation" means distributed
3 renewable generation, as defined by Section 39.916, using solar
4 energy technology.

5 (2) "Owner of distributed solar generation" includes a
6 retail electric customer who contracts with another person to
7 install or maintain distributed solar generation on the customer's
8 side of the meter, regardless of whether the customer takes
9 ownership of the installed distributed solar generation.

10 (3) "Surplus electricity" means electricity generated
11 by distributed solar generation that is not consumed at the place
12 the distributed solar generation is installed but flows onto the
13 electric distribution system.

14 (b) On the Internet website found at
15 <http://www.powertochoose.org>, the commission shall provide for
16 access to easily comparable information regarding retail electric
17 providers' offers to owners of distributed solar generation for
18 their surplus electricity, including information regarding their
19 contract terms, for each retail electric provider using that
20 website.

21 (c) On the Internet website found at
22 <http://www.powertochoose.org>, the commission shall provide for
23 access to easily comparable information regarding offers of
24 renewable energy credit marketers to owners of distributed solar
25 generation, for each renewable energy credit marketer using that
26 website.

27 (d) The commission by rule shall require electric

1 utilities, electric cooperatives, and retail electric providers to
2 provide on publicly accessible Internet websites information on
3 purchase price offers per kilowatt hour for surplus electricity and
4 information instructing customers with distributed solar
5 generation on how to request and obtain the purchase rates offered.

6 SECTION 5. Chapter 202, Property Code, is amended by adding
7 Section 202.010 to read as follows:

8 Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In
9 this section, "solar energy device" has the meaning assigned by
10 Section 171.107, Tax Code.

11 (b) Except as otherwise provided by this section, a property
12 owners' association may not include or enforce a provision in a
13 dedicatory instrument that prohibits or restricts a property owner
14 from installing a solar energy device.

15 (c) A provision that violates Subsection (b) is void.

16 (d) This section does not prohibit the inclusion or
17 enforcement of a provision in a dedicatory instrument that
18 prohibits a solar energy device that:

19 (1) as adjudicated by a court:

20 (A) threatens the public health or safety; or

21 (B) violates a law;

22 (2) is located on property owned or maintained by the
23 property owners' association;

24 (3) is located on property owned in common by the
25 members of the property owners' association; or

26 (4) is located in an area on the property owner's
27 property other than:

- 1 (A) on the roof of the home; or
 2 (B) in a fenced yard or patio maintained by the
 3 property owner.

4 SECTION 6. The heading to Subtitle F, Title 16, Property
 5 Code, is amended to read as follows:

6 SUBTITLE F. REGULATION [~~INSPECTION~~] OF [~~NEW~~] RESIDENTIAL
 7 CONSTRUCTION GENERALLY

8 SECTION 7. The heading to Chapter 446, Property Code, is
 9 amended to read as follows:

10 CHAPTER 446. INSPECTION OF RESIDENTIAL CONSTRUCTION IN
 11 UNINCORPORATED AREAS AND OTHER AREAS NOT SUBJECT TO MUNICIPAL
 12 INSPECTIONS

13 SECTION 8. Subtitle F, Title 16, Property Code, is amended
 14 by adding Chapter 447 to read as follows:

15 CHAPTER 447. REQUIREMENTS FOR NEW CONSTRUCTION CONTRACTS

16 Sec. 447.001. SOLAR PANEL OPTION REQUIRED IN CERTAIN
 17 SUBDIVISIONS. (a) In this section, "solar energy device" means a
 18 system or series of mechanisms designed primarily to provide
 19 heating or cooling or to produce electrical or mechanical power by
 20 collecting and transferring solar-generated energy. The term
 21 includes a mechanical or chemical device that has the ability to
 22 store solar-generated energy for use in heating or cooling or in the
 23 production of power.

24 (b) This chapter applies only to a contract for construction
 25 of a new home in a subdivision that contains more than 50 lots on
 26 which the builder has built or is offering to build new homes.

27 (c) A builder who enters into a contract to which this

1 chapter applies shall offer the homebuyer an option to install a
2 solar energy device on the home for heating or cooling or for the
3 production of power.

4 SECTION 9. Subchapter D, Chapter 2305, Government Code, is
5 amended by adding Section 2305.0321 to read as follows:

6 Sec. 2305.0321. PILOT REVOLVING LOAN PROGRAM FOR SOLAR
7 ENERGY FOR SCHOOL BUILDINGS. (a) The energy office shall
8 establish a pilot program under the loanstar revolving loan program
9 to provide loans to pay the cost of installing photovoltaic solar
10 panels on public school buildings and the cost of associated energy
11 efficiency improvements to the buildings. The energy office shall
12 allocate to the pilot program at least \$4 million from the funds
13 available to the loanstar revolving loan program.

14 (b) The energy office by rule shall establish the terms
15 under which a loan may be made under the pilot program, including
16 the interest rate for repayment of pilot program loans.

17 (c) Through the pilot program, the energy office shall offer
18 to each school district the opportunity to apply for a loan to pay
19 the cost of installing photovoltaic solar panels on at least one
20 school building of the school district's choice and the cost of
21 associated energy efficiency improvements to that building. The
22 energy office by rule shall establish a procedure for determining
23 which school districts qualify for a loan under the pilot program,
24 including rules for selecting the school districts that will
25 receive a loan if there is not sufficient money set aside for pilot
26 program improvements at all school districts.

27 (d) Each school district that receives a loan shall pay for

1 the principal of and interest on the loan for each school building
2 improvement primarily from the amount budgeted for the energy costs
3 of the school at which the solar panels are installed. The school
4 district may make additional payments of the principal of or
5 interest on a loan from money rebated to it as compensation for
6 electric energy generated by the solar panels or money received as a
7 gift or grant for the purpose of paying the loan.

8 (e) This section expires September 1, 2011, and the pilot
9 program established under this section is abolished on that date.

10 SECTION 10. The Public Utility Commission of Texas shall
11 adopt rules establishing the programs required under Section
12 39.9155, Utilities Code, as added by this Act, as soon as
13 practicable.

14 SECTION 11. Section 202.010, Property Code, as added by
15 this Act, applies to a deed restriction enacted before, on, or after
16 the effective date of this Act.

17 SECTION 12. Chapter 447, Property Code, as added by this
18 Act, applies only to a contract for new home construction entered
19 into on or after the effective date of this Act. A contract entered
20 into before the effective date of this Act is governed by the law in
21 effect immediately before the effective date of this Act, and that
22 law is continued in effect for that purpose.

23 SECTION 13. The state energy conservation office shall
24 establish a program under Section 2305.0321, Government Code, as
25 added by this Act, not later than January 1, 2010.

26 SECTION 14. This Act takes effect immediately if it
27 receives a vote of two-thirds of all the members elected to each

S.B. No. 545

1 house, as provided by Section 39, Article III, Texas Constitution.
2 If this Act does not receive the vote necessary for immediate
3 effect, this Act takes effect September 1, 2009.