

By: Fraser, et al.

S.B. No. 545

Substitute the following for S.B. No. 545:

By: Crabb

C.S.S.B. No. 545

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the creation of a distributed and wholesale solar
3 generation incentive program and to encouraging the use of solar
4 energy devices.

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

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

8 Sec. 39.002. APPLICABILITY. This chapter, other than
9 Sections 39.155, 39.157(e), 39.203, 39.903, 39.904, 39.9051,
10 39.9052, ~~[and]~~ 39.914(e), and 39.9156, does not apply to a
11 municipally owned utility or an electric cooperative. Sections
12 39.157(e), 39.203, and 39.904, however, apply only to a municipally
13 owned utility or an electric cooperative that is offering customer
14 choice. If there is a conflict between the specific provisions of
15 this chapter and any other provisions of this title, except for
16 Chapters 40 and 41, the provisions of this chapter control.

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

19 Sec. 39.9155. SOLAR GENERATION INCENTIVE PROGRAM. (a) In
20 this section:

21 (1) "Distributed solar generation" means distributed
22 renewable generation, as defined by Section 39.916, using solar
23 energy technology.

24 (2) "Owner of distributed solar generation" includes a

1 retail electric customer who contracts with another person to
2 install or maintain distributed solar generation on the customer's
3 side of the meter, regardless of whether the customer takes
4 ownership of the installed distributed solar generation.

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

9 (b) It is the goal of the legislature that electric
10 utilities administer incentive programs for residential and
11 commercial customers to increase the amount of distributed solar
12 generation and wholesale solar generation installed within the
13 state in a cost-effective, market-neutral, and nondiscriminatory
14 manner, with a goal of installing at least 3,000 megawatts of solar
15 generation capacity in this state by 2020, at least 1,000 megawatts
16 of which must be distributed renewable generation. It is the intent
17 of the legislature that the incentive program be developed and
18 administered in a manner that, to the greatest extent practicable,
19 creates employment opportunities for residents of this state.

20 (c) The commission by rule shall:

21 (1) establish a solar generation incentive program, to
22 be implemented by electric utilities;

23 (2) oversee the implementation of the program required
24 by Subdivision (1);

25 (3) establish procedures to achieve the goal described
26 by Subsection (b); and

27 (4) provide for:

1 (A) deferral of the costs of complying with the
2 requirements of this section by a utility that is unable to
3 implement the nonbypassable fees allowed by Subsection (d)(1)
4 because of a rate freeze; and

5 (B) recovery of the costs on expiration of the
6 rate freeze.

7 (d) The rules adopted under Subsection (c) must include
8 provisions for:

9 (1) recovery of the cost of electric utility programs
10 authorized by this section through nonbypassable fees of:

11 (A) \$0.000650 per kilowatt hour for each
12 residential or commercial customer meter; and

13 (B) \$40 per month for each industrial customer
14 meter;

15 (2) rebates to defray the cost of installing solar
16 generation as provided by Subsection (f);

17 (3) the wholesale solar provisions described by
18 Subsection (g); and

19 (4) eliminating the incentives provided by this
20 subsection on the date the goals established by Subsection (b) are
21 achieved.

22 (e) Except as provided by Subsection (l), electric
23 utilities may not assess the fees authorized by this section after
24 the fifth anniversary of the date the program required by this
25 section is established by commission rule. The commission shall
26 ensure that all fees collected under this section are used for the
27 programs authorized by this section, except that utilities may not

1 use more than 2.5 percent of the fees collected for administrative
2 expenses related to this section, as approved by the commission.

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

16 (1) \$2.40 per watt for installation of distributed
17 renewable generation with a capacity of not more than 10 kilowatts;

18 (2) \$1.50 per watt for installation of distributed
19 renewable generation with a capacity of more than 10 but not more
20 than 2,000 kilowatts; and

21 (3) \$1 per watt for installation of wholesale or
22 industrial generation.

23 (g) If the demand for rebates under this section for
24 wholesale generation exceeds the money available for those
25 installations, the commission shall consider the following in
26 determining which projects receive rebates:

27 (1) projects that require the lowest amount per

1 megawatt installed of subsidy to be commercially viable;

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

5 (3) projects that enhance the reliability of the
6 transmission and distribution grid or defer the need for additional
7 transmission and distribution infrastructure;

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

10 (5) projects that provide maximum output during
11 periods when electricity demand is highest in this state;

12 (6) projects that can provide ancillary services to
13 the electric grid;

14 (7) projects with the potential to improve ambient air
15 quality in areas designated by the United States Environmental
16 Protection Agency as nonattainment areas under Section 107(d) of
17 the federal Clean Air Act (42 U.S.C. Section 7407); and

18 (8) projects with the potential to place this state in
19 a leadership position for emerging solar technology research or
20 development.

21 (h) For the first 24 months of the program, the commission
22 shall reserve 25 percent of the rebates available for installation
23 of distributed renewable generation for use by public school
24 districts in this state. The interested districts must obtain
25 funding for the balance of the installation cost not later than 90
26 days after filing an application with the commission. If the 25
27 percent reservation provided under this subsection is fully used

1 before the expiration of the 24-month period, the commission may
2 continue to reserve for an additional 24 months 25 percent of the
3 available rebates.

4 (i) Notwithstanding any other provision of this title, a
5 retail electric provider or any other person may own distributed
6 solar generation and enter into a contract with the retail customer
7 on whose property the generation is located to lease the generation
8 or sell the output to the retail customer or to the customer's
9 retail electric provider. The owner of the generation is not an
10 electric utility and is not required to register with the
11 commission as a power generation company or self generator unless
12 the commission determines that such registration is necessary to
13 maintain the reliability of the distribution grid. The commission
14 may establish appropriate reporting requirements for trading
15 renewable energy credits. An area of this state in which a
16 distributed renewable generation owner sells output as provided by
17 this subsection is not for that reason considered an area in which
18 customer choice has been introduced. Not more than 25 percent of
19 the annual program budget may be allocated to rebates awarded to
20 retail electric providers for distributed renewable generation
21 installed on retail customers' property as described by this
22 subsection.

23 (j) The commission, in consultation with the Electric
24 Reliability Council of Texas, shall prepare and make available a
25 study indicating geographic areas where utility scale non-wind
26 renewable energy can be located with minimal additional
27 transmission facilities.

1 (k) Selection of projects by the commission under
2 Subsection (g) is not required to be conducted as a contested case
3 proceeding. The commission may appoint an advisory committee to
4 assist the commission in evaluating proposals made under Subsection
5 (g), provided, however, that members of the committee may not have a
6 financial interest in any of the proposals. After conclusion of a
7 process authorized by Subsection (g), the commission shall release
8 a complete record of the proposals and the evaluation of the factors
9 required to be considered under Subsection (g).

10 (l) The commission may extend the fees and program
11 authorized by this section for an additional five years if the
12 commission finds that a substantial amount of manufacturing of
13 solar generation products has located in Texas after the initial
14 five-year program and that the extension of the fees does not
15 present an undue burden to customers.

16 (m) Notwithstanding any other law, this section applies to
17 every electric utility in this state.

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

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

22 (1) electric cooperatives and municipally owned
23 utilities administer incentive programs that increase the amount of
24 solar generation installed in this state in a cost-effective,
25 market-neutral, and nondiscriminatory manner;

26 (2) customers of electric cooperatives and
27 municipally owned utilities will have access to incentives for the

1 installation of distributed solar generation; and

2 (3) electric cooperatives and municipally owned
3 utilities expend funds to increase the amount of solar generation
4 at a total funding level consistent with the requirements for
5 electric utilities in this state under Sections 39.9155(d)(1) and
6 (e).

7 (b) This section applies only to an electric cooperative or
8 municipally owned utility with retail sales of more than 500,000
9 megawatt hours in 2007.

10 (c) Beginning not later than September 1, 2012, a
11 municipally owned utility or electric cooperative must report
12 annually to the state energy conservation office, in a form and
13 manner determined by the office, information regarding the efforts
14 of the municipally owned utility or electric cooperative related to
15 this section.

16 (d) This section does not prevent the governing body of an
17 electric cooperative or municipally owned utility from adopting
18 rules, programs, and incentives to encourage or provide for the
19 installation of more solar generation capacity than the goals
20 established by Section 39.9155 or rules adopted under that section.

21 (e) An electric cooperative or municipally owned utility
22 may recover the costs required by this section through a
23 nonbypassable fee consistent with that authorized by the commission
24 for electric utilities under Section 39.9155(d)(1) or another cost
25 recovery mechanism as determined by the governing body of the
26 electric cooperative or municipally owned utility.

27 SECTION 4. Chapter 202, Property Code, is amended by adding

1 Section 202.010 to read as follows:

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

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

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

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

13 (1) threatens the public health or safety;

14 (2) violates a law;

15 (3) is located on property owned or maintained by the
16 property owners' association;

17 (4) is located on property owned in common by the
18 members of the property owners' association;

19 (5) is located in an area on the property owner's
20 property other than:

21 (A) on the roof of the home; or

22 (B) in a fenced yard or patio maintained by the
23 property owner; or

24 (6) is mounted on a device that is taller or more
25 visually obtrusive than is necessary for the solar energy device to
26 operate at not less than 90 percent of its rated efficiency.

27 SECTION 5. The heading to Subtitle F, Title 16, Property

1 Code, is amended to read as follows:

2 SUBTITLE F. REGULATION [~~INSPECTION~~] OF [~~NEW~~] RESIDENTIAL
3 CONSTRUCTION GENERALLY

4 SECTION 6. The heading to Chapter 446, Property Code, is
5 amended to read as follows:

6 CHAPTER 446. INSPECTION OF RESIDENTIAL CONSTRUCTION IN
7 UNINCORPORATED AREAS AND OTHER AREAS NOT SUBJECT TO MUNICIPAL
8 INSPECTIONS

9 SECTION 7. Subtitle F, Title 16, Property Code, is amended
10 by adding Chapter 447 to read as follows:

11 CHAPTER 447. REQUIREMENTS FOR NEW CONSTRUCTION CONTRACTS

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

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

23 (c) A builder who enters into a contract to which this
24 chapter applies shall offer the homebuyer at least one plan in the
25 subdivision on which the homebuyer may purchase an option to
26 install a solar energy device on the home for heating or cooling or
27 for the production of power.

1 SECTION 8. Subchapter D, Chapter 2305, Government Code, is
2 amended by adding Section 2305.0321 to read as follows:

3 Sec. 2305.0321. REVOLVING LOAN PROGRAM FOR SOLAR ENERGY
4 IMPROVEMENTS. (a) The energy office shall establish a revolving
5 loan program patterned after the loanstar revolving loan program to
6 provide loans to pay the costs of installing photovoltaic solar
7 panels on and associated energy efficiency improvements to public
8 school buildings and buildings owned by religious organizations.
9 The energy office shall allocate to the program at least \$75 million
10 from money available under the American Recovery and Reinvestment
11 Act of 2009 (Pub. L. No. 111-5), subject to federal approval of the
12 use of that money for the purposes of the program.

13 (b) The energy office by rule shall establish the terms
14 under which a loan may be made under the program, including the
15 interest rate for repayment of program loans. A program loan must
16 be paid over a 15-year term.

17 (c) Through the program, the energy office shall offer to
18 each school district the opportunity to apply for a loan to pay the
19 cost of installing photovoltaic solar panels on at least one school
20 building of the school district's choice and the cost of associated
21 energy efficiency improvements to that building.

22 (d) The energy office by rule shall establish a procedure
23 for determining which school district buildings or religious
24 organization buildings qualify for a program loan.

25 (e) Each school district that receives a program loan shall
26 pay for the principal of and interest on the loan primarily from the
27 amount budgeted for the energy costs of the school at which the

1 improvements are installed. The school district may make
2 additional payments of the principal of or interest on a program
3 loan from money rebated to it as compensation for electric energy
4 generated by the solar panels or money received as a gift or grant
5 for the purpose of paying the loan.

6 (f) In this section, "religious organization" means a
7 synagogue, mosque, church, or other institution:

8 (1) the purpose of which is the propagation of
9 religious beliefs; and

10 (2) that is exempt from federal income tax under
11 Section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C.
12 Section 501(a)) by being listed under Section 501(c) of that code
13 (26 U.S.C. Section 501(c)).

14 SECTION 9. The Public Utility Commission of Texas shall
15 adopt rules establishing the programs required under Sections
16 39.9155 and 39.9156, Utilities Code, as added by this Act, as soon
17 as practicable.

18 SECTION 10. Section 202.010, Property Code, as added by
19 this Act, applies to a deed restriction enacted before, on, or after
20 the effective date of this Act.

21 SECTION 11. Chapter 447, Property Code, as added by this
22 Act, applies only to a contract for new home construction entered
23 into on or after the effective date of this Act. A contract entered
24 into before the effective date of this Act is governed by the law in
25 effect immediately before the effective date of this Act, and that
26 law is continued in effect for that purpose.

27 SECTION 12. The state energy conservation office shall

1 establish a program under Section 2305.0321, Government Code, as
2 added by this Act, not later than January 1, 2010.

3 SECTION 13. This Act takes effect immediately if it
4 receives a vote of two-thirds of all the members elected to each
5 house, as provided by Section 39, Article III, Texas Constitution.
6 If this Act does not receive the vote necessary for immediate
7 effect, this Act takes effect September 1, 2009.