

1-1 By: Fraser, Van de Putte S.B. No. 545
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 545 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the creation of a distributed solar generation
1-11 incentive program and to encouraging the use of solar energy
1-12 devices.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter Z, Chapter 39, Utilities Code, is
1-15 amended by adding Section 39.9155 to read as follows:

1-16 Sec. 39.9155. DISTRIBUTED SOLAR GENERATION INCENTIVE
1-17 PROGRAM. (a) It is the goal of the legislature that electric
1-18 utilities administer incentive programs for residential and
1-19 commercial customers to increase the amount of distributed solar
1-20 generation, utility scale solar generation, and energy storage
1-21 installed within the state in a cost-effective, market-neutral, and
1-22 nondiscriminatory manner.

1-23 (b) The commission by rule shall:

1-24 (1) establish a distributed solar generation
1-25 incentive program, to be implemented by electric utilities;

1-26 (2) oversee the implementation of the program required
1-27 by Subdivision (1); and

1-28 (3) establish procedures to achieve the goal described
1-29 by Subsection (a).

1-30 (c) The rules adopted under Subsection (b) must include
1-31 provisions for:

1-32 (1) a distributed solar generation cost recovery
1-33 factor to ensure timely and reasonable cost recovery for electric
1-34 utility expenditures under this section;

1-35 (2) recovery of the cost of electric utility programs
1-36 authorized by this section through nonbypassable fees, which may
1-37 not exceed:

1-38 (A) 20 cents per month for residential customers;

1-39 (B) \$2 per month for commercial customers; and

1-40 (C) \$20 per month for industrial customers;

1-41 (3) rebates to customers to defray the cost of
1-42 installing distributed solar generation as provided by Subsection
1-43 (e);

1-44 (4) a requirement that customers within the Electric
1-45 Reliability Council of Texas who install distributed solar
1-46 generation will have the option to be equipped with an advanced
1-47 meter and appropriate procedures such that the customers have the
1-48 option to be settled on their real-time energy usage instead of a
1-49 load profile and receive the real-time energy price for net energy
1-50 exported to the grid by the customer;

1-51 (5) a requirement that retail electric providers
1-52 provide the option of a real-time energy price to customers who
1-53 install distributed solar generation and receive the real-time
1-54 energy price for net energy exported to the grid by the customer,
1-55 until the commission determines that the market is adequately
1-56 providing that option for customers;

1-57 (6) appropriate net metering policies and retail rate
1-58 options for customers served by electric utilities outside the
1-59 Electric Reliability Council of Texas; and

1-60 (7) the utility scale solar and energy storage program
1-61 provided by Subsection (f).

1-62 (d) Electric utilities may not assess the fees authorized by
1-63 this section after the fifth anniversary of the date the program

2-1 required by this section is established by commission rule, except
 2-2 as provided by Subsection (k). The commission shall ensure that all
 2-3 fees collected under this section are used for the programs
 2-4 authorized by this section, except that utilities may not use more
 2-5 than 2.5 percent of the funds collected for administrative expenses
 2-6 related to this section, as approved by the commission.

2-7 (e) The commission shall set a rebate amount for the
 2-8 installation of solar generation. The commission shall
 2-9 periodically adjust the rebate amount such that the quantity of
 2-10 solar generation installed under this section is maximized, but
 2-11 shall reduce rebate amounts by not less than five percent per year.
 2-12 The commission may set a higher rebate amount for solar generation
 2-13 manufactured wholly or substantially in this state, provided that
 2-14 the higher amount is not more than 20 percent higher than the rebate
 2-15 applicable to all other solar generation. The commission may
 2-16 provide for rebates to be provided directly to customers or to
 2-17 qualified installers of solar generation. Unless otherwise
 2-18 adjusted by the commission, the initial rebates shall be:

2-19 (1) \$2.40 per watt for installations on residential
 2-20 buildings;
 2-21 (2) \$1.50 per watt for installations on commercial
 2-22 buildings; and
 2-23 (3) \$1 per watt for installations at industrial
 2-24 facilities.

2-25 (f) The commission may direct not more than 70 percent of
 2-26 the funds collected by the fees authorized by this section to
 2-27 utility scale solar generation and energy storage projects if the
 2-28 commission determines such projects are more cost-effective than
 2-29 distributed solar generation or will provide a greater benefit to
 2-30 the reliability of the electric grid. The commission may establish
 2-31 rebate amounts not to exceed \$1 per watt for such projects or may
 2-32 consider other methods to award funds in order to maximize the
 2-33 quantity of generation installed under this section. If the demand
 2-34 for funds under this section exceeds the available funds, the
 2-35 commission shall consider the following in determining which
 2-36 projects receive subsidies:

2-37 (1) projects that require the lowest amount of subsidy
 2-38 to be commercially viable;
 2-39 (2) projects that use the transmission capacity built
 2-40 under Section 39.904(g) and require minimal additional
 2-41 transmission facilities;
 2-42 (3) projects that enhance the reliability of the
 2-43 transmission and distribution grid or defer the need for additional
 2-44 transmission and distribution infrastructure;
 2-45 (4) projects that provide maximum output during
 2-46 periods when electricity demand is highest in this state; and
 2-47 (5) projects that can provide ancillary services to
 2-48 the electric grid.

2-49 (g) The commission shall develop a "Made in Texas"
 2-50 certification program for energy products that include distributed
 2-51 solar generation. The commission shall post a list of energy
 2-52 products that are wholly or substantially produced in Texas and
 2-53 shall conduct education efforts to inform customers of the
 2-54 availability of Texas-manufactured energy products. The
 2-55 commission may partner or contract with third parties or nonprofit
 2-56 organizations to achieve this goal.

2-57 (h) Notwithstanding any other provision of this title, a
 2-58 retail electric provider or any other person may own distributed
 2-59 generation and enter into a contract with the retail customer on
 2-60 whose property the generation is located to lease the generation or
 2-61 sell the output to the retail customer or to the customer's retail
 2-62 electric provider. The owner of the generation is not an electric
 2-63 utility and is not required to register with the commission as a
 2-64 power generation company or self generator unless the commission
 2-65 determines that such registration is necessary to maintain the
 2-66 reliability of the distribution grid. The commission may establish
 2-67 appropriate reporting and other requirements for distributed
 2-68 generation owners to be eligible to earn renewable energy credits.

2-69 (i) The commission, in consultation with the Electric

3-1 Reliability Council of Texas, shall prepare and make available a
 3-2 study indicating geographic areas where utility scale non-wind
 3-3 renewable energy can be located with minimal additional
 3-4 transmission facilities.

3-5 (j) Selection of projects by the commission under
 3-6 Subsection (f) is not required to be conducted as a contested case
 3-7 proceeding. The commission may appoint an advisory committee to
 3-8 assist the commission in evaluating proposals made under Subsection
 3-9 (f), provided, however, that members of the committee may not have a
 3-10 financial interest in any of the proposals. After conclusion of a
 3-11 process authorized by Subsection (f), the commission shall release
 3-12 a complete record of the proposals and the evaluation of the factors
 3-13 required to be considered under Subsection (f).

3-14 (k) The commission may extend the fees and program
 3-15 authorized by this section for an additional five years if the
 3-16 commission finds that a substantial amount of manufacturing of
 3-17 solar generation products has located in Texas after the initial
 3-18 five-year program and that the extension of the fees does not
 3-19 present an undue burden to customers.

3-20 SECTION 2. Subchapter Z, Chapter 39, Utilities Code, is
 3-21 amended by adding Section 39.9156 to read as follows:

3-22 Sec. 39.9156. SOLAR GENERATION INCENTIVE PROGRAMS. (a) It
 3-23 is the goal of the legislature that:

3-24 (1) electric cooperatives and municipally owned
 3-25 utilities administer incentive programs that increase the amount of
 3-26 solar generation installed within the state in a cost-effective,
 3-27 market-neutral, and nondiscriminatory manner;

3-28 (2) customers of electric cooperatives and
 3-29 municipally owned utilities will have a choice of and access to
 3-30 incentives for the installation of distributed solar generation;
 3-31 and

3-32 (3) electric cooperatives and municipally owned
 3-33 utilities with retail sales of more than 500,000 megawatt hours in
 3-34 2007 expend funds to increase the amount of solar generation and
 3-35 other renewable energy and energy storage projects consistent with
 3-36 the requirements for electric utilities in this state.

3-37 (b) Not later than September 1, 2015, a municipally owned
 3-38 utility or electric cooperative with retail sales of more than
 3-39 500,000 megawatt hours in 2007 must report to the state energy
 3-40 conservation office, in a form and manner determined by the office,
 3-41 information regarding the efforts of the municipally owned utility
 3-42 or electric cooperative related to this section.

3-43 SECTION 3. Chapter 202, Property Code, is amended by adding
 3-44 Section 202.010 to read as follows:

3-45 Sec. 202.010. REGULATION OF SOLAR ENERGY DEVICES. (a) In
 3-46 this section, "solar energy device" has the meaning assigned by
 3-47 Section 171.107, Tax Code.

3-48 (b) Except as otherwise provided by this section, a property
 3-49 owners' association may not include or enforce a provision in a
 3-50 dedicatory instrument that prohibits or restricts a property owner
 3-51 from installing a solar energy device.

3-52 (c) A provision that violates Subsection (b) is void.

3-53 (d) This section does not prohibit the inclusion or
 3-54 enforcement of a provision in a dedicatory instrument that
 3-55 prohibits a solar energy device that:

3-56 (1) threatens the public health or safety;

3-57 (2) violates a law;

3-58 (3) is located on property owned or maintained by the
 3-59 property owners' association;

3-60 (4) is located on property owned in common by the
 3-61 members of the property owners' association;

3-62 (5) is located in an area on the property owner's
 3-63 property other than:

3-64 (A) on the roof of the home; or

3-65 (B) in a fenced yard or patio maintained by the
 3-66 property owner; or

3-67 (6) is mounted on a device that is taller or more
 3-68 visually obtrusive than is necessary for the solar energy device to
 3-69 operate at not less than 90 percent of its rated efficiency.

4-1 SECTION 4. The heading to Subtitle F, Title 16, Property
4-2 Code, is amended to read as follows:

4-3 SUBTITLE F. REGULATION [INSPECTION] OF [NEW] RESIDENTIAL
4-4 CONSTRUCTION GENERALLY

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

4-7 CHAPTER 446. INSPECTION OF RESIDENTIAL CONSTRUCTION IN
4-8 UNINCORPORATED AREAS AND OTHER AREAS NOT SUBJECT TO MUNICIPAL
4-9 INSPECTIONS

4-10 SECTION 6. Subtitle F, Title 16, Property Code, is amended
4-11 by adding Chapter 447 to read as follows:

4-12 CHAPTER 447. REQUIREMENTS FOR NEW CONSTRUCTION CONTRACTS

4-13 Sec. 447.001. SOLAR PANEL OPTION REQUIRED IN CERTAIN
4-14 SUBDIVISIONS. (a) In this section, "solar energy device" means a
4-15 system or series of mechanisms designed primarily to provide
4-16 heating or cooling or to produce electrical or mechanical power by
4-17 collecting and transferring solar-generated energy. The term
4-18 includes a mechanical or chemical device that has the ability to
4-19 store solar-generated energy for use in heating or cooling or in the
4-20 production of power.

4-21 (b) This chapter applies only to a contract for construction
4-22 of a new home in a subdivision that contains more than 50 lots on
4-23 which the builder has built or is offering to build new homes.

4-24 (c) A builder who enters into a contract to which this
4-25 chapter applies shall offer the homebuyer an option to install a
4-26 solar energy device on the home for heating or cooling or for the
4-27 production of power.

4-28 SECTION 7. Subchapter D, Chapter 2305, Government Code, is
4-29 amended by adding Section 2305.0321 to read as follows:

4-30 Sec. 2305.0321. PILOT REVOLVING LOAN PROGRAM FOR SOLAR
4-31 ENERGY FOR SCHOOL BUILDINGS. (a) The energy office shall
4-32 establish a pilot program under the loanstar revolving loan program
4-33 to provide loans to pay the cost of installing photovoltaic solar
4-34 panels on public school buildings and the cost of associated energy
4-35 efficiency improvements to the buildings. The energy office shall
4-36 allocate to the pilot program at least \$4 million from the funds
4-37 available to the loanstar revolving loan program.

4-38 (b) The energy office by rule shall establish the terms
4-39 under which a loan may be made under the pilot program, including
4-40 the interest rate for repayment of pilot program loans.

4-41 (c) Through the pilot program, the energy office shall offer
4-42 to each school district the opportunity to apply for a loan to pay
4-43 the cost of installing photovoltaic solar panels on at least one
4-44 school building of the school district's choice and the cost of
4-45 associated energy efficiency improvements to that building. The
4-46 energy office by rule shall establish a procedure for determining
4-47 which school districts qualify for a loan under the pilot program,
4-48 including rules for selecting the school districts that will
4-49 receive a loan if there is not sufficient money set aside for pilot
4-50 program improvements at all school districts.

4-51 (d) Each school district that receives a loan shall pay for
4-52 the principal of and interest on the loan for each school building
4-53 improvement primarily from the amount budgeted for the energy costs
4-54 of the school at which the solar panels are installed. The school
4-55 district may make additional payments of the principal of or
4-56 interest on a loan from money rebated to it as compensation for
4-57 electric energy generated by the solar panels or money received as a
4-58 gift or grant for the purpose of paying the loan.

4-59 (e) This section expires September 1, 2011, and the pilot
4-60 program established under this section is abolished on that date.

4-61 SECTION 8. The Public Utility Commission of Texas shall
4-62 adopt rules establishing the programs required under Section
4-63 39.9155, Utilities Code, as added by this Act, as soon as
4-64 practicable.

4-65 SECTION 9. Section 202.010, Property Code, as added by this
4-66 Act, applies to a deed restriction enacted before, on, or after the
4-67 effective date of this Act.

4-68 SECTION 10. Chapter 447, Property Code, as added by this
4-69 Act, applies only to a contract for new home construction entered

5-1 into on or after the effective date of this Act. A contract entered
5-2 into before the effective date of this Act is governed by the law in
5-3 effect immediately before the effective date of this Act, and that
5-4 law is continued in effect for that purpose.

5-5 SECTION 11. The state energy conservation office shall
5-6 establish a program under Section 2305.0321, Government Code, as
5-7 added by this Act, not later than January 1, 2010.

5-8 SECTION 12. This Act takes effect immediately if it
5-9 receives a vote of two-thirds of all the members elected to each
5-10 house, as provided by Section 39, Article III, Texas Constitution.
5-11 If this Act does not receive the vote necessary for immediate
5-12 effect, this Act takes effect September 1, 2009.

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