

1-1 By: Schwertner, West S.B. No. 1002
 1-2 (In the Senate - Filed February 17, 2023; March 3, 2023,
 1-3 read first time and referred to Committee on Business & Commerce;
 1-4 March 31, 2023, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 11, Nays 0; March 31, 2023,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 1002 By: Schwertner

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the operation of public electric vehicle charging
 1-24 stations.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Subtitle B, Title 2, Utilities Code, is amended
 1-27 by adding Chapter 42 to read as follows:

1-28 CHAPTER 42. PUBLIC CHARGING OF ELECTRIC VEHICLES

1-29 Sec. 42.0101. LEGISLATIVE FINDINGS. (a) The legislature
 1-30 finds that it is in the best interests of this state to continue the
 1-31 long-standing policy of supporting private sector investment in
 1-32 infrastructure by establishing a framework designed to encourage
 1-33 competitive private sector investment in the deployment of public
 1-34 electric vehicle charging stations.

1-35 (b) The legislature finds that encouraging investment in
 1-36 the deployment of public electric vehicle charging stations is
 1-37 essential to foster the rapid installation and widespread use of
 1-38 public electric vehicle charging stations on property whose owners
 1-39 or tenants desire to install public electric vehicle charging
 1-40 stations.

1-41 (c) The legislature finds that electric utilities,
 1-42 transmission and distribution utilities, competitive entities, and
 1-43 the commission have important roles to fill in supporting the
 1-44 installation and use of infrastructure for electric vehicle
 1-45 charging.

1-46 (d) The legislature finds that it is necessary to:

1-47 (1) implement competitively neutral policies to
 1-48 encourage competitive private sector investment in public electric
 1-49 vehicle charging station deployment;

1-50 (2) develop and implement competitively neutral
 1-51 electricity tariffs that are optimized for public electric vehicle
 1-52 charging stations and based on cost causation principles while
 1-53 ensuring transparency in pricing and recognizing changing market
 1-54 needs; and

1-55 (3) encourage competitive private investment,
 1-56 ownership, and operation of public electric vehicle charging
 1-57 stations, including equipment that allows for fast charging.

1-58 Sec. 42.0102. DEFINITIONS. In this chapter:

1-59 (1) "Direct-current fast charging station" means a
 1-60 charging system capable of delivering at least 50 kilowatts of

2-1 direct-current electrical power to an electric vehicle's
2-2 rechargeable battery at a voltage of 200 volts or greater.
2-3 (2) "Electric vehicle" means a vehicle that is
2-4 propelled by one or more electric motors using energy stored in the
2-5 form of a rechargeable battery.
2-6 (3) "Electric vehicle charging provider" means the
2-7 owner or operator of a public electric vehicle charging station.
2-8 The term does not include an electric utility or transmission and
2-9 distribution utility.
2-10 (4) "Electric vehicle charging service" means sales
2-11 made from a public electric vehicle charging station to the public.
2-12 (5) "Level two charging station" means a charging
2-13 system capable of delivering at least 3 and not more than 19.2
2-14 kilowatts of alternating-current electrical power to an electric
2-15 vehicle's rechargeable battery at a voltage of at least 208 volts on
2-16 a circuit of at least 40 amperes.
2-17 (6) "Make-ready infrastructure" means the electrical
2-18 infrastructure required to service a public electric vehicle
2-19 charging station's electrical load on the electric utility's or
2-20 transmission and distribution utility's side of the point of
2-21 delivery. The term:
2-22 (A) includes all site-specific electrical
2-23 infrastructure required to accommodate engineering, physical,
2-24 operational, or other constraints for the public electric vehicle
2-25 charging station, regardless of whether the infrastructure is on
2-26 the utility's or customer's side of the point of delivery; and
2-27 (B) does not include the public electric vehicle
2-28 charging station or any utility infrastructure on the customer's
2-29 side of the point of delivery, up to and including the meter.
2-30 (7) "Public electric vehicle charging station" means
2-31 any level two charging station or direct-current fast charging
2-32 station that delivers electricity from a source outside an electric
2-33 vehicle into an electric vehicle, is separate and distinct from
2-34 make-ready infrastructure, and is accessible for commercial use by
2-35 the public, or similar vehicle charging equipment capable of
2-36 delivering electricity into an electric vehicle faster than a level
2-37 two charging station. The term does not include vehicle charging
2-38 equipment that is:
2-39 (A) used by an electric utility, a transmission
2-40 and distribution utility, or an affiliate to charge:
2-41 (i) an electric vehicle owned by the
2-42 utility or affiliate; or
2-43 (ii) as an incident of employment, an
2-44 electric vehicle owned by an employee of the utility or affiliate;
2-45 or
2-46 (B) located on the premises of a customer of an
2-47 electric utility, a transmission and distribution utility, or an
2-48 affiliate and:
2-49 (i) used by the customer or the customer's
2-50 tenants, affiliates, or guests; and
2-51 (ii) not used commercially for electric
2-52 vehicle charging service.
2-53 Sec. 42.0103. PUBLIC CHARGING OF ELECTRIC VEHICLES OUTSIDE
2-54 OF ERCOT. (a) This section applies only to an electric utility
2-55 that operates solely outside of ERCOT.
2-56 (b) An electric utility:
2-57 (1) may not provide electric vehicle charging service
2-58 directly to a customer except as provided by this section;
2-59 (2) may be affiliated with an entity that provides
2-60 electric vehicle charging service from a public electric vehicle
2-61 charging station if the affiliate:
2-62 (A) is not subject to regulation by the
2-63 commission; and
2-64 (B) is subject to prohibitions on market power
2-65 abuse, cross-subsidizations, co-branding, and preferential
2-66 treatment between regulated and competitive activities described
2-67 by Section 39.157(d); and
2-68 (3) consistent with the requirements of Subchapter B,
2-69 Chapter 38, and Section 39.157(d)(3), shall offer the same

3-1 nondiscriminatory rates, terms, and conditions offered to an
3-2 affiliate described by Subdivision (2) to other electric vehicle
3-3 charging providers in the utility's service area for the operation
3-4 of public electric vehicle charging stations.

3-5 (c) An affiliate of an electric utility that provides
3-6 electric vehicle charging service and is not subject to regulation
3-7 by the commission is subject to the same tariffs of the electric
3-8 utility that apply to any other entity receiving from the utility
3-9 electric service that is used to provide electric vehicle charging
3-10 service.

3-11 (d) This section does not prohibit an electric utility from
3-12 subsidizing the costs of make-ready infrastructure through rates or
3-13 charges for services provided by the electric utility's regulated
3-14 services.

3-15 (e) An electric utility may provide electric vehicle
3-16 charging service directly to a customer only if:

3-17 (1) the public electric vehicle charging station used
3-18 to provide electric vehicle charging service is constructed in
3-19 compliance with the requirements of this section; and

3-20 (2) the rates charged by the utility for electric
3-21 vehicle charging service are set by the commission under Subsection
3-22 (m).

3-23 (f) An electric utility seeking to provide electric vehicle
3-24 charging service directly to a customer shall:

3-25 (1) file with the commission a proposal identifying
3-26 the specific location at which the utility seeks to provide
3-27 electric vehicle charging service and a general description of the
3-28 public electric vehicle charging station the utility proposes to
3-29 construct at the location; and

3-30 (2) provide notice of the filing made under
3-31 Subdivision (1):

3-32 (A) on the utility's Internet website; and

3-33 (B) to each dealer to which Chapter 2310,
3-34 Occupations Code, applies who offers for retail sale motor fuel at a
3-35 site that is located not more than 15 miles from the proposed
3-36 location of the public electric vehicle charging station.

3-37 (g) A notice provided under Subsection (f)(2) must include:

3-38 (1) the date the electric utility filed a proposal to
3-39 provide electric vehicle charging service under Subsection (f)(1);
3-40 and

3-41 (2) the date by which a person may file a proposal to
3-42 provide reasonably comparable electric vehicle charging service
3-43 under Subsection (h).

3-44 (h) The commission shall determine whether the provision of
3-45 electric vehicle charging service under a proposal submitted under
3-46 Subsection (f)(1) is in the public interest because the service is
3-47 adequate for the needs of the area. Not later than the 90th day
3-48 after the date the commission determines that the provision of the
3-49 proposed electric vehicle charging service is in the public
3-50 interest, a person other than the electric utility may notify the
3-51 commission that:

3-52 (1) the person:

3-53 (A) intends to provide electric vehicle charging
3-54 service that is adequate for the needs of the area in reasonable
3-55 proximity to the proposed location of the public electric vehicle
3-56 charging station and request the necessary make-ready
3-57 infrastructure from the electric utility; and

3-58 (B) is firmly committed to placing into service
3-59 equipment necessary to provide the electric vehicle charging
3-60 service before the later of:

3-61 (i) 18 months after the date the person
3-62 submits the notice to the commission; or

3-63 (ii) the date of completion of the
3-64 installation of the necessary make-ready infrastructure to provide
3-65 the electric vehicle charging service; and

3-66 (2) the person is capable of:

3-67 (A) acquiring the right to use the property at
3-68 which the electric vehicle charging service will be provided; and

3-69 (B) financing the cost of the equipment described

4-1 by Subdivision (1)(B).

4-2 (i) The commission shall issue a determination regarding
4-3 each notice received under Subsection (h) of whether:

4-4 (1) the proposed electric vehicle charging service is
4-5 adequate for the needs of the area; and

4-6 (2) the person has made the commitment and has the
4-7 capabilities described by that subsection.

4-8 (j) The commission by rule may establish a distance that
4-9 constitutes reasonable proximity to a type of location for the
4-10 purposes of Subsection (h). The commission may also issue an order
4-11 establishing a distance other than one authorized by rule that
4-12 constitutes reasonable proximity to a location for purposes of
4-13 Subsection (h) for a specific electric utility. In establishing
4-14 distances that constitute reasonable proximity to a location, the
4-15 commission shall:

4-16 (1) consider population density and site access;

4-17 (2) establish the reasonable proximity between two
4-18 locations on an interstate highway for the purposes of Subsection
4-19 (h) as not more than two miles; and

4-20 (3) consider the Texas Department of Transportation's
4-21 designation by category of nearby roads other than interstate
4-22 highways when establishing the reasonable proximity between two
4-23 locations at which electric vehicle charging service will be
4-24 provided on roads other than interstate highways.

4-25 (k) An electric utility that files a proposal under
4-26 Subsection (f) may proceed with construction of the public electric
4-27 vehicle charging station and the provision of electric vehicle
4-28 charging service unless the commission determines, based on the
4-29 information submitted under Subsection (h), that:

4-30 (1) the electric vehicle charging service proposed
4-31 under Subsection (h) in response to the utility's proposal is
4-32 adequate for the needs of the area and that the person who submitted
4-33 the notice under Subsection (h) has made the commitment and has the
4-34 capabilities described by that subsection; or

4-35 (2) the electric vehicle charging service proposed
4-36 under Subsection (f) by the utility unreasonably duplicates:

4-37 (A) electric vehicle charging service provided
4-38 by another person; or

4-39 (B) a facility under construction that another
4-40 person will use to provide electric vehicle charging service.

4-41 (l) An electric utility authorized to proceed with the
4-42 construction of a public electric vehicle charging station under
4-43 Subsection (k) shall notify the commission that the utility intends
4-44 to proceed with the construction and may construct and operate the
4-45 proposed public electric vehicle charging station after the 120th
4-46 day after the date the utility files the notice of intent under this
4-47 subsection.

4-48 (m) On application by an electric utility, the commission
4-49 shall set in a manner authorized under Chapter 36 the rates the
4-50 utility may charge for electric vehicle charging service. The
4-51 rates must be reasonable and ensure that competition is not
4-52 impaired. The commission may set rates differently for different
4-53 locations and times of day and for different types of electric
4-54 vehicle charging service.

4-55 (n) The commission shall permit an electric utility
4-56 authorized to construct and operate a public electric vehicle
4-57 charging station under this section to recover, using the rate of
4-58 return on investment established in the commission's final order in
4-59 the utility's most recent base rate proceeding, reasonable and
4-60 necessary costs incurred for the construction, financing,
4-61 operation, and maintenance of that public electric vehicle charging
4-62 station.

4-63 (o) This section does not prohibit a person who is not an
4-64 electric utility or an affiliate of an electric utility from
4-65 entering into an agreement with an electric utility for the utility
4-66 to own or operate a public electric vehicle charging station on the
4-67 person's property if:

4-68 (1) the utility does not:

4-69 (A) provide electric vehicle charging service

5-1 using the public electric vehicle charging station; or
5-2 (B) brand or market the public electric vehicle
5-3 charging station as owned or operated by the utility, including by
5-4 presenting the utility's name, logo, or any other distinguishing
5-5 mark to indicate that the utility owns or operates the public
5-6 electric vehicle charging station;
5-7 (2) the person solely determines:
5-8 (A) physical access to and use of the public
5-9 electric vehicle charging station necessary to carry out
5-10 responsibilities associated with ownership and operation of the
5-11 public electric vehicle charging station; and
5-12 (B) prices for the electric vehicle charging
5-13 service; and
5-14 (3) the person pays for all electric utility-related
5-15 costs under a tariff approved by the commission that provides for
5-16 full recovery of the costs of the public electric vehicle charging
5-17 station from the person, including incremental revenues paid by the
5-18 person to the utility associated with the electric vehicle charging
5-19 service.
5-20 (p) The commission shall:
5-21 (1) require each electric utility for which the
5-22 commission has approved a tariff under Subsection (o) to offer
5-23 service under the terms of the tariff to other persons seeking
5-24 agreements in the utility's service area on a nondiscriminatory
5-25 basis; and
5-26 (2) ensure that revenue collected by an electric
5-27 utility under an agreement under Subsection (o) allows the utility
5-28 to recover the costs of owning, constructing, financing, operating,
5-29 and maintaining the public electric vehicle charging station from
5-30 the person and not the utility's other customers.
5-31 (q) A public electric vehicle charging station operated
5-32 under an agreement under Subsection (o) is not subject to the
5-33 requirements of Subsections (f)-(l).
5-34 (r) Notwithstanding any other provision of this section, a
5-35 municipality that is a customer of an electric utility may enter
5-36 into an agreement with the utility under which:
5-37 (1) the utility owns and operates a public electric
5-38 vehicle charging station and provides electric vehicle charging
5-39 service on the municipality's property; and
5-40 (2) none of the costs of constructing, financing,
5-41 operating, or maintaining the public electric vehicle charging
5-42 station described by Subdivision (1) are recovered from the other
5-43 customers of the utility.
5-44 Sec. 42.0104. PUBLIC CHARGING OF ELECTRIC VEHICLES INSIDE
5-45 ERCOT. (a) A transmission and distribution utility:
5-46 (1) may not directly own, operate, or provide electric
5-47 vehicle charging service from a public electric vehicle charging
5-48 station;
5-49 (2) may not include costs of a public electric vehicle
5-50 charging station for recovery through rates approved by the
5-51 commission;
5-52 (3) may be affiliated with a competitive affiliate
5-53 that provides electric vehicle charging service from a public
5-54 electric vehicle charging station through a separate entity or
5-55 third party only if:
5-56 (A) the affiliate:
5-57 (i) is not subject to regulation by the
5-58 commission; and
5-59 (ii) is subject to prohibitions on market
5-60 power abuse, cross-subsidizations, co-branding, and preferential
5-61 treatment between regulated and competitive activities described
5-62 by Section 39.157(d); and
5-63 (B) the alternative fuels data center map
5-64 maintained by the United States Department of Energy does not show
5-65 that a public electric vehicle charging station owned or operated
5-66 by an electric vehicle charging provider and used to provide
5-67 electric vehicle charging service is located less than 50 miles
5-68 from the location where the affiliate proposes to provide electric
5-69 vehicle charging service; and

6-1 (4) consistent with the requirements of Subchapter B,
6-2 Chapter 38, and Section 39.157(d)(3), shall offer the same
6-3 nondiscriminatory rates, terms, and conditions offered to the
6-4 affiliate described by Subdivision (3) to other electric vehicle
6-5 charging providers in the transmission and distribution utility's
6-6 service area for the operation of public electric vehicle charging
6-7 stations.

6-8 (b) An affiliate described by Subsection (a)(3) shall
6-9 maintain for at least two years documentation of the alternative
6-10 fuels data center map that is available on the date on which the
6-11 installation of the public electric vehicle charging station
6-12 begins.

6-13 (c) An affiliate of a transmission and distribution utility
6-14 that provides, owns, operates, or maintains public electric vehicle
6-15 charging stations and is not subject to regulation by the
6-16 commission may not be subsidized by any rate or charge for any
6-17 regulated services provided by the transmission and distribution
6-18 utility.

6-19 (d) This section does not prohibit a transmission and
6-20 distribution utility from constructing, owning, or operating
6-21 make-ready infrastructure on the transmission and distribution
6-22 utility's side of the point of delivery that is funded through rates
6-23 or charges for services under the transmission and distribution
6-24 utility's tariffs.

6-25 (e) Notwithstanding Subsection (a), a transmission and
6-26 distribution utility may own, operate, lease, install, or otherwise
6-27 procure service from a public electric vehicle charging station on
6-28 the utility's premises for the sole purpose of serving the utility's
6-29 vehicles.

6-30 (f) The commission shall permit a transmission and
6-31 distribution utility to recover, using the rate of return on
6-32 investment established in the commission's final order in the
6-33 utility's most recent base rate proceeding, reasonable and
6-34 necessary costs incurred for the construction or installation of
6-35 make-ready infrastructure on the utility's side of the point of
6-36 delivery.

6-37 SECTION 2. (a) Sections 42.0104(a)(3)(B) and 42.0104(b),
6-38 Utilities Code, as added by this Act, apply only to electric vehicle
6-39 charging service provided on or after January 1, 2026.

6-40 (b) Section 42.0104(c), Utilities Code, as added by this
6-41 Act, applies only to a rate or charge imposed after January 1, 2024.

6-42 SECTION 3. This Act takes effect September 1, 2023.

6-43 * * * * *