

BILL ANALYSIS

Senate Research Center

S.B. 398
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Business & Commerce
5/31/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texans are investing more technology to manage their energy consumption, including electric generation and storage resources. These investments are made at the consumers' own expense and on their own property. However, over the past few years, customers have been told by municipalities that they are not allowed to install this equipment, and they have faced proposals that would subject them to significantly different electricity charges solely due to their decision to self-generate energy.

S.B. 398 builds on the existing state policy set forth in Utilities Code Section 39.101(b)(3) that supports personal property rights and the ability of a person to generate their own electricity on their own property. This bill will be particularly helpful in providing protections if another storm such as Winter Storm Uri occurs.

This bill's application is narrowly tailored to distributed renewable generation as already defined in Utilities Code Section 39.916. This bill allows flexibility for homeowners' associations and electric utilities, in order to address customer protection issues and to limit the scope of municipal ordinances that regulate residential solar generation systems. This bill is identical to the bill passed in the Senate Business and Commerce Committee and the Senate last session. Unfortunately, the bill died in the House Calendars Committee that year.

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

S.B. 398 amends current law relating to certain resources and facilities for distributed generation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 5, Business & Commerce Code, by adding Chapter 113, as follows:

CHAPTER 113. SALES AND LEASING OF DISTRIBUTED RENEWABLE GENERATION RESOURCES

Sec. 113.001. DEFINITIONS. Defines "distributed renewable generation" and "small commercial customer."

Sec. 113.002. APPLICABILITY. (a) Provides that this chapter applies to a seller or lessor of distributed renewable generation resources.

(b) Provides that chapter does not apply to:

(1) a transaction involving the sale or transfer of the real property on which a distributed renewable generation resource is located;

(2) a person, including a person acting through the person's officers, employees, brokers, or agents, who markets, sells, solicits, negotiates, or enters into an agreement for the sale or financing of a distributed renewable generation resource as part of a transaction involving the sale or transfer of the real property on which the distributed renewable generation resource is or will be affixed; or

(3) a third party that enters into an agreement for the financing of a distributed renewable generation resource.

Sec. 113.003. LEASE, SALES, AND INSTALLATION DISCLOSURES. Requires a seller or lessor who enters into a purchase, lease, or power purchase agreement with a residential or small commercial customer for the operation of a distributed renewable generation resource to provide to the customer certain information in writing.

Sec. 113.004. ADDITIONAL DISCLOSURES FOR LEASE AGREEMENTS. Requires a lessor, in addition to the disclosures required under Section 113.003, to provide to a leasing residential or small commercial customer certain lease information in writing.

Sec. 113.005. DISCLOSURES FOR POWER PURCHASE AGREEMENTS. Entitles a residential or small commercial customer who enters into a power purchase agreement to receive certain disclosure and lease information in writing.

SECTION 2. Amends Chapter 229, Local Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. REGULATION OF SOLAR ENERGY DEVICES

Sec. 229.101. REGULATION OF SOLAR ENERGY DEVICES. (a) Defines "municipally owned utility," "small commercial customer," and "solar energy device."

(b) Prohibits a municipality from prohibiting or restricting the installation of a solar energy device by a residential or small commercial customer except to the extent:

(1) a property owner's association is authorized to prohibit the installation under Sections 202.010(d) (1) through (7) (relating to a property association's ability to include or enforce provisions regarding certain solar energy devices), Property Code; or

(2) the interconnection guidelines and interconnection agreement of a municipally owned utility serving the customer's service area, the rules of the Public Utility Commission of Texas (PUC), or the protocols of an independent organization certified under Section 39.151 (Essential Organizations), Utilities Code, limit the installation of solar energy devices due to reliability, power quality, or safety of the distribution system.

SECTION 3. Amends Subchapter B, Chapter 35, Utilities Code, by adding Section 35.037, as follows:

Sec. 35.037. INTERCONNECTION AND OPERATION OF CERTAIN DISTRIBUTED GENERATION FACILITIES FOR FOOD SUPPLY CHAIN. (a) Defines "customer" and "distributed generation facility."

(b) Provides that this section only applies in the Electric Reliability Council of Texas (ERCOT) power region in areas where retail customer choice has not been implemented.

(c) Authorizes a person who owns or operates a distributed generation facility served by a municipally owned utility or electric cooperative in the ERCOT power region to sell electric power generated by the distributed generation facility at wholesale, including the provision of ancillary services, subject to the limitations of this section.

(d) Authorizes a person who owns or operates a distributed generation facility to sell electric power generated by the distributed generation facility at wholesale to a municipally owned utility or electric cooperative certificated for retail service to the area where the distributed generation facility is located or to a related generation and transmission electric cooperative. Requires the municipally owned utility or electric cooperative to purchase at wholesale the quantity of electric power generated by the distributed generation facility needed to satisfy the full electric requirements of the customer on whose side of the meter the distributed generation facility is installed and operated at a wholesale price agreed to by the customer and to resell that quantity of power at retail to the customer at the rate applicable to the customer for retail service, which is required at minimum to include all amounts paid for the wholesale electric power, during:

(1) an emergency declared by the independent organization certified under Section 39.151 for the ERCOT power region that creates the potential for interruption of service to the customer;

(2) any service interruption at the customer's premises;

(3) construction on the customer's premises that creates the potential for interruption of service to the customer;

(4) maintenance and testing of the distributed generation facility; and

(5) additional times mutually agreed on by the owner or operator of the distributed generation facility and the municipally owned utility or electric cooperative.

(e) Requires the customer to provide written notice as soon as reasonably practicable to the municipally owned utility or electric cooperative of a circumstance described by Subsection (d)(3) or (4).

(f) Requires the municipally owned utility or electric cooperative, in addition to a sale authorized under Subsection (d), on request by an owner or operator of a distributed generation facility, to provide wholesale transmission service to the distributed generation facility owner in the same manner as to other power generation companies for the sale of power from the distributed generation facility at wholesale, including for the provision of ancillary services, in the ERCOT market. Requires the distributed generation facility owner to comply with all applicable PUC rules and protocols and with governing documents of the independent organization certified under Section 39.151 for the ERCOT power region. Provides that this section does not require a municipally owned utility or electric cooperative to transmit electricity to a retail point of delivery in the certificated service area of the municipally owned utility or electric cooperative.

(g) Authorizes a municipally owned utility or electric cooperative or related generation and transmission electric cooperative, in addition to a sale authorized under Subsection (d) or (f), to purchase electric power provided by the owner or operator of the distributed generation facility at wholesale at a mutually agreed on price. Authorizes the price to be based wholly or partly on the ERCOT market clearing price of energy at the time of day and at the location at which the electric power is made available.

(h) Requires a municipally owned utility or electric cooperative to make available a standard interconnection application and agreement for distributed generation facilities that is substantially similar to the PUC's interconnection agreement form and consistent with this section to facilitate the connection of distributed generation facilities. Requires a municipally owned utility or electric cooperative to allow interconnection of a distributed generation facility and to provide to a distributed generation facility on a nondiscriminatory basis wholesale transmission service, including at distribution voltage, in the same manner as for other power generation companies to transmit to the ERCOT power grid the electric power generated by the distributed generation facility. Authorizes a municipally owned utility or electric cooperative to recover from the owner or operator of the distributed generation facility all reasonable costs necessary for and directly attributable to the interconnection of the facility, including the reasonable costs of necessary system upgrades and improvements directly attributable to the distributed generation facility.

(i) Requires the municipally owned utility or electric cooperative, not later than the 30th day after the date a complete application for interconnection of a distributed generation facility is received, to provide the applicant with a written good faith cost estimate for interconnection-related costs. Prohibits the municipally owned utility or electric cooperative from incurring any interconnection-related costs without entering into a written agreement for the payment of those costs by the applicant.

(j) Requires that the process to interconnect a distributed generation facility be completed not later than the 240th day after the date the municipally owned utility or electric cooperative receives payment of all estimated costs to complete the interconnection, except that the period is authorized to be extended by written agreement between the parties or the period is authorized to be extended after a good faith showing by the municipally owned utility or electric cooperative that the interconnection requires improvements, upgrades, or construction of new facilities that cannot reasonably be completed within that period, in which case the period is authorized to be extended for a time not to exceed the time necessary for the improvements, upgrades, or construction of new facilities to be completed.

(k) Requires a municipally owned utility or electric cooperative to charge the owner or operator of a distributed generation facility rates on a reasonable and nondiscriminatory basis for providing wholesale transmission service to the distributed generation facility owner in the same manner as for other power generation companies to transmit to the ERCOT power grid the electric power generated by the distributed generation facility in accordance with a tariff filed by the municipally owned utility or electric cooperative with the PUC.

(l) Requires the owner or operator of the distributed generation facility to contract with the municipally owned utility or electric cooperative or the municipally owned utility's or electric cooperative's designee for any scheduling, settlement, communication, telemetry, or other services required to participate in the ERCOT wholesale market, but only to the extent that the utility, cooperative, or designee offers the services on a nondiscriminatory basis and at a commercially reasonable cost. Authorizes the owner or operator of the distributed generation facility, if the municipally owned utility or electric cooperative or the municipally owned utility's or electric cooperative's designee does not offer or declines to offer the services, or fails to do so on a nondiscriminatory basis and at a commercially reasonable cost as determined by quotes from at least three third parties providing the same services, to contract with a third party provider to obtain the services.

(m) Requires a distributed generation facility to comply with emissions limitations established by the Texas Commission on Environmental Quality for a standard emissions permit for an electric generation facility unit installed after January 1, 1995.

(n) Provides that a municipally owned utility or electric cooperative is not required to interconnect a distributed generation facility under this section if, on the date the utility or cooperative receives an application for interconnection of the facility, the municipally owned utility or electric cooperative has interconnected distributed generation facilities with an aggregate capacity that equals the lesser amount of 5 percent of the municipally owned utility's or electric cooperative's average of the 15-minute summer peak load coincident with the independent system operator's 15-minute summer peak load in each of the months of June, July, August, and September or 300 megawatts, adjusted annually by the percentage of total system load growth in the ERCOT power region beginning in 2022.

(o) Provides that a municipally owned utility or electric cooperative that, on the date the utility or cooperative receives an application for interconnection of a distributed generation facility, has interconnected distributed generation facilities with an aggregate capacity less than the threshold described by Subsection (n) is required to increase that capacity only up to that threshold.

(p) Provides that this section is not intended to change registration standards or other qualifications required by the independent organization certified under Section 39.151 for the ERCOT power region related to the participation of distributed generation facilities in the wholesale market. Provides that this section is not intended to allow distributed generation facilities to participate in a manner that is not technically feasible or that is otherwise in conflict with wholesale rules and requirements adopted by the independent organization certified under Section 39.151 for the ERCOT power region.

SECTION 4. Provides that it is the intent of the legislature in enacting Section 35.037, Utilities Code, to allow grocers the ability to deploy back-up generation in the ERCOT power region in areas that have not implemented retail customer choice.

SECTION 5. Provides that the changes in law made by this Act apply only to an agreement governing the sale or lease of distributed renewable generation, as defined by Section 39.916 (Interconnection of Distributed Renewal Generation), Utilities Code, or a power purchase agreement entered into on or after the effective date of this Act. Provides that an agreement entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2021.