

## **BILL ANALYSIS**

Senate Research Center  
87R2471 BRG-F

S.B. 398  
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Business & Commerce  
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As Filed

### **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 occurred.

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.

As proposed, S.B. 398 amends current law relating to distributed renewable generation resources.

### **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 in writing:

(1) contact information of the salesperson and installer of the generation resource;

(2) a description of all equipment to be installed;

(3) the cost of all equipment to be installed;

(4) a detailed accounting of fees associated with the installation or operation of the generation resource;

(5) representations, if any, made as part of the agreement regarding the expected operational performance and financial performance of the generation resource; and

(6) all applicable warranties.

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 in writing:

(1) the term and rate of the lease, including any payment escalators or other terms that affect the customer's payments; and

(2) a statement of whether the lease and any applicable warranty or maintenance agreement is transferable to a subsequent purchaser of the property where the distributed renewable generation resource is installed.

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

(1) the disclosures required under Sections 113.003(1), (2), (5), and (6);

(2) the term and rate of the power purchase agreement, including any payment escalators or other terms that affect the customer's payments; and

(3) whether the power purchase agreement and any applicable warranty or maintenance agreement is transferable to a subsequent purchaser of the property where the distributed renewable generation resource is installed.

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, 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. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2021.